S. Hrg. 98-1009

LABOR VIOLENCE AND THE HOBBS ACT

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST AND SECOND SESSIONS

ON

S. 462

A BILL TO AMEND SECTION 1951 OF TITLE 18 OF THE UNITED STATES CODE, AND FOR OTHER PURPOSES

OCTOBER 25, 1983; APRIL 30 AND MAY 1, 1984

Serial No. J-98-76

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
36-059 O
WASHINGTON : 1984

5521-72

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ROBERT DOLE, Kansas
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania

JOSEPH R. BIDEN, Jr., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
MAX BAUCUS, Montana
HOWELL HEFLIN, Alabama

Vinton DeVane Lide, *Chief Counsel and Staff Director*
Deborah K. Owen, *General Counsel*
Deborah G. Bernstein, *Chief Clerk*
Mark H. Gitenstein, *Minority Chief Counsel*

CONTENTS

DATES OF HEARINGS

Page

Tuesday, October 25, 1983 1

Monday, April 30, 1984 117

Wednesday, May 1, 1984 155

PROPOSED LEGISLATION

Text of S. 462—A bill to amend section 1951 of title 18 of the United States Code, and for other purposes 7

Agency view—U.S. Department of Justice 9

OPENING STATEMENTS

Grassley, Hon. Charles E 1, 117, 155

Thurmond, Hon. Strom (chairman) 3, 119

Specter, Hon. Arlen 4

Denton, Hon. Arlen 14, 157

Robinson, Hon. J. Kenneth (Representative of VA) 121

CHRONOLOGICAL LIST OF WITNESSES

Tuesday, October 25, 1983

Wohlsen, Robert, Sr., president, Wohlsen Construction, Lancaster, PA 14

Mungovan, Cher, Hawaii; John Ford, Oregon; and John Pickell, vice president, Brinderson, Corp., California 26

Haseler, Dr. Stephen M., former Deputy Mayor of Greater London (Labour) and visiting professor at Georgetown University; Michael T. Ashby, of Idaho; and Sheriff Ronald R. Smith, Boundary County, ID 65

Guyton, Horace, Jr., New Jersey, and David Young, Florida 102

Monday, April 30, 1984

Mungovan, Walter, formerly of C&W Construction, Maui, HI 124

Mungovan, Ian, Maui, HI 143

Bartow, Gerald, Bartow Builders, Port Huron, MI 146

Wednesday, May 1, 1984

Crane, Hon. Philip M., a Representative in Congress from the State of Illinois, and Hon. Thomas J. Bliley, a Representative in Congress from the State of Virginia 161

Clarke, Floyd I., Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation 204

Kaye, Sigmund, Philadelphia, PA 223

Gold, Laurence, special counsel, AFL-CIO 230

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Ashby, Michael T.:
  Testimony 66
  Prepared statement 71
Bartow, Gerald:
  Testimony 146

Bartow, Gerald—Continued Page
  Letter from Joseph L. Eastwood, chief of police, Port Huron, MI, re strain put on his department during strike 152
Bliley, Hon. Thomas J.:
  Testimony 163
  Report on Republican Study Committee hearings on "Labor Violence," March 5, 1984 165
Clarke, Floyd I.: Testimony 204
Crane, Hon. Philip M.:
  Testimony 161
  Hearing on "Labor Violence," February 9, 1984, before the House Republican Ad Hoc Study Committee 175
Denton, Hon. Jeremiah:
  Article entitled "Two Hurt in Springville Picket Line Dispute," by Lou Ann Ray, St. Clair News-Aegis, Pell City, AL 159
  Article entitled "St. Clair Men Injured Near Picket Line," the Anniston Star, Anniston, AL 160
Ford, John: Testimony 53
Gold, Laurence:
  Testimony 230
  Prepared statement 234
  Letter to Chairman Thurmond from Jackie Presser, general president, International Brotherhood of Teamsters, dated April 23, 1984, expressing regret at not being able to attend hearing as a witness 243
  Letter to Senator Grassley from Laurence Gold, dated June 4, 1984, response to 17 written questions 244
Guyton, Horace, Jr.:
  Testimony 102
  "Scab List" or "Hit List" of nonstriking workers of Wheaton Industries of Milleville, NJ 105
Haseler, Dr. Stephen M.: Testimony 65
Kaye, Sigmund:
  Testimony 223
  Answers to written questions submitted to witness 225
  Prepared statement 227
Mungovan, Cher:
  Testimony 26
  Prepared statement 32
  Statement of Charles F. Marsland, Jr., prosecuting attorney, city and county of Honolulu, HI, dated October 17, 1983 46
  Letter to Ms. Mungovan from Robert A. McConnell, Assistant Attorney General, U.S. Department of Justice, dated October 18, 1983, re the *Enmons* decision and its effect upon enforcement of the Hobbs Act 48
  Quotes from letters received by Ms. Mungovan 49
Mungovan, Ian: Testimony 146
Mungovan, Walter:
  Testimony 124
  Statement of Charles F. Marsland, Jr., prosecuting attorney, city and county of Honolulu, HI, dated April 30, 1984 137
Pickell, John: Testimony 54
Smith, Ronald R.:
  Testimony 86
  Prepared statement 90
  Letters to Sheriff Smith from Idaho State Police and the city administrator of Bonners Ferry, ID, re cost of labor disputes 95
Wohlsen, Robert, Sr.:
  Testimony 14
  Prepared statement 22
Young, David: Testimony 109

MISCELLANEOUS MATERIAL

Letter to Senator Grassley from Walter G. Kelley, executive vice president of Montana Power Co., dated October 20, 1983, unable to appear before Judiciary Committee 115
Letter to Chairman Thurmond, from Ray Denison, director, department of legislation, AFL-CIO, requesting consideration of witnesses that oppose S. 462 116

Page
"Union Violence, Fear Discourage Witnesses," article by Dwight Cunningham, in the February 9, 1984 Washington Times 202

APPENDIX

Part 1—Additional Statements and Views

Memorandum to Senator Grassley from Terry T. Campo, counsel, dated October 25, 1983, re State extortion laws with union exemptions 249
Memorandum to Senator Grassley from Terry T. Campo, counsel, dated June 8, 1984, re recent Hobbs Act decision, *United States* v. *Edgar Jones, et al* 252
Letter to Veronica Gonzales, from the deputy clerk of the U.S. District Court, eastern district of Kentucky, dated June 7, 1984, re Pike Criminal 83-8—*United States of America* v. *Edgar Jones, et al.*, with enclosed judgment and commitment orders 254
  Indictment 278
Prepared statement of the American Federation of Labor and Congress of Industrial Organizations 297
Resolution adopted by the 51st Annual Convention of the Newspaper Guild (AFL-CIO, CLC) June 18-22, 1984, in opposition to legislation 333
Resolution adopted by the 51st Annual Convention of the Newspaper Guild (AFL-CIO, CLC) June 18-22, 1984, calling for the prohibition of law enforcement officials impersonating reporters, doctors, lawyers, or clergy 335
Issue briefing paper on union violence by the National Right to Work Committee, January 1984 336
  Tables 340
  Newspaper articles 346
Prepared statement of the American Rental Association, in support of the legislation 350
  State legislation re *Enmons* 353
  Penal Code of several States 354
Letter and statement of the National Association of Home Builders, dated November 16, 1984 387
  NAHB resolution 389
Review article on Union Violence by Morgan O. Reynolds, Texas A&M University 390
Questions from Senator Grassley to the National Labor Relations Board, dated April 10, 1984 403
  Answers 404
Statement of the American Farm Bureau Federation 406
Letter and statement of the National Association of Manufacturers 408
Letter and statement of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America 412

Part 2—Newspaper Articles

Strike-related violence in Oklahoma, directed against Garland Coal Co. and Combustion Engineering Co. as reported in the Tulsa World, the Dallas Morning News, and the Tulsa Tribune 440
Violence or threats of violence in Pennsylvania, directed against Wohlsen Construction and its employees, and other unlawful actions directed against nonunion companies and individuals, by union officials, as reported by Lancaster Intelligence Journal, the Philadelphia Inquirer, and the Philadelphia Welcomat 445
Strike-related violence directed against employees of Phelps-Dodge in Arizona, as reported by the Associated Press and the Washington Post 448
Violence or threats of violence by union officials acting as agents for organized crime, as reported by New York magazine 451
Violence or threats of violence in Hawaii against the Mungovan family by union officials, as reported by the Honolulu Advertiser, the Maui News, the Honolulu Star-Bulletin, and the Washington Post 458
Violence or threats of violence directed against nonunion companies and employees in Michigan, as reported by the Port Huron, MI, Times-Herald, and the Detroit News 519
Strike-related violence in Montana directed against the Brindeson Corp. and its employees, Montana Power Co., and Haines Pipeline Co. and its employees, as reported by the Great Falls Tribune, the Missoula, Montana Missoulian, the Helena Independent Record and the Montana Standard 528

PART 3—COURT PROCEEDINGS

Page

United States of America v. *Ralph Torres and William O. Nishibayashi,* memorandum in aid of sentencing, dated June 5, 1983 542

C&W Construction Co. v. *Brotherhood of Carpenters and Joiners of America,* complaint; demand for jury trial, dated July 15, 1983 553

- Amended complaint; demand for jury trial; summons 568
- Summons 578

Haines Pipeline v. *Dan Jones, et al.*, excerpt of proceedings, dated August 11, 1983 580

- Excerpt of proceedings, dated August 12, 1983 704

PART 4—PHOTOS AND AFFIDAVITS

Vice president of Local 3171 wearing firearm 886

Wives and children of striking workers blocking roadway 887

Log Stacker tire puncturing device 888

Union officers blocking entrance to Louisiana Pacific Co 889

Bullet hole in Log Stacker 890

Vice president of Local 3171 throwing on object at nonstriking employees of Louisiana Pacific Co 891

Tire puncturing devices 892

Bullet hole in engine of Log Stacker 893

Molotov Cocktail and tire puncturing devices 894

Affidavits in the *Louisiana-Pacific Corp.* v. *Western District Council, Lumber, Production & Industrial Workers* case 895

Affidavits in the *Louisiana-Pacific Corp.* v. *Puget Sound District Council of the Lumber Production & Industrial Workers, Local No. 2633* case 966

Birmingham Manufacturing Co., Inc. v. *United Steel Workers of America, AFL-CIO, CLC,* amendment to plaintiff's motion for an order to show cause, dated November 15, 1983 998

- Affidavits 1006
- Damage to property 1030
- Affidavits 1033

LABOR VIOLENCE AND THE HOBBS ACT—S. 462

TUESDAY, OCTOBER 25, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SR-485, Dirksen Senate Office Building, Hon. Charles E. Grassley (acting chairman) presiding.

Also present: Senators Thurmond and Specter.

Staff present: Vinton DeVane Lide, chief counsel and staff director; Lynda Nersesian, chief counsel and staff director, Subcommittee on Administrative Practice and Procedure; Terry T. Campo, counsel, Subcommittee on Administrative Practice and Procedure; William Bowman, counsel, Subcommittee on Juvenile Justice; Bettsy Greenwood, counsel, Subcommittee on Immigration; Veronica Gonzalez, research assistant, Subcommittee on Administrative Practice and Procedure.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. I would like to call, in the absence of Senator Thurmond, chairman of the full Judiciary Committee, this meeting of the Judiciary Committee, which will be a hearing on the Hobbs Act, S. 462. I would like to call this meeting to order and say that we are here today because in the year 1973, the U.S. Supreme Court ruled in effect that extortion was not extortion if it was used for, and I quote, "legitimate union objectives."

Each of the witnesses here today is to some extent a victim of that decision, as well as of the violence directed against them, for in each case local law enforcement did little or nothing to protect them or punish those who harmed them, and the Federal Government could do nothing.

I point out for the benefit of anyone studying the record of this bill that hearings were held on it in the Separation of Powers Subcommittee on March 23 of this year. In the 97th Congress, hearings were held on a similar bill, S. 613, sponsored by Senator Thurmond, before the Criminal Law Subcommittee of the Judiciary Committee. The dates of those hearings in the 97th Congress are December 10, 1981 and March 11, 1982. I would also point out that the position of most business and labor organizations on this bill are revealed in statements at those hearings.

This is not an antiunion hearing. It is an antiviolence hearing. Neither I nor any of the witnesses are antiunion; what we are all against is violence, particularly where, as here, those who have performed this violence are allowed to go unpunished.

For 10 years, between the years 1961 and 1971, when I worked at the Waterloo Register Co. in Cedar Falls, IA, I was a voluntary member of a labor union, the International Association of Machinists. When the union went out on strike, I went out on strike; in fact, at the union meetings, I voted for the motion to strike.

The men and women I worked with and went out on strike with did not believe they had a right to use violence to get their way, and I do not believe that the overwhelming majority of American working men and women who are union members do either.

Extortion is the taking of property from another with his or her consent, but with that consent having been obtained by the use of force or violence or threat of violence. Nevertheless, in the *Enmons* decision, the U.S. Supreme Court ruled that if the goals of the violence were legitimate union objectives, it was not wrongful and therefore was not extortion.

A vigorous dissent to this five to four decision was written by Justice William O. Douglas, and he is hardly known as a right wing, antiunion zealot. In Justice Douglas' dissent in the *Enmons* case, and I might add that he was joined in this dissent by Justice Rehnquist, and it is certainly rare for both Rehnquist and Douglas to agree, Justice Douglas summarized the problem succinctly, and I quote:

> Seeking higher wages is certainly not unlawful, but using violence to obtain them seems plainly within the scope of extortion, as used in the Act, just as is the use of violence to exact payment for no work or the use of violence to get a sham substitution for no work. The regime of violence, whatever its precise objective, is a common device of extortion and is condemned by the Act.

The practical effect of the *Enmons* decision is that there is no effective Federal law to curb violence by union officials, and in every State but California, the State attorney general has no independent criminal prosecutorial authority. As a result, the only person that can bring a criminal action against a union official or a union member for extortion is the locally elected county district attorney.

The practical political realities involved thus render any prosecution for extortion nearly impossible.

Today we will hear witnesses from seven States testify about their personal experiences with union violence. Some of these witnesses will testify from their own personal knowledge that violent activity took place not only with the approval, but with the encouragement and promotion of union officials.

We will hear witnesses attest to the practical impact on collective bargaining when hundreds of thousands of dollars of property damage is done by union members during a strike. Not all of these cases make out a clear-cut case of extortion, but they exhibit, nonetheless, a pattern of violence requiring the attention and resources of the Federal Government.

The entire area of labor law has been preempted by the Federal Government because of the importance of labor peace to interstate commerce. This is the fundamental finding of the Wagner Act establishing the right of collective bargaining.

But where there is no law, lawlessness reigns. For this reason, earlier this year I introduced S. 462. Under the bill, Federal jurisdiction in extortion cases is restored, regardless of the objectives sought by the violence.

We restate the definition of extortion as it has traditionally been defined and then clearly express the intent of Congress that nothing in this section, including the use of the word "wrongful," is intended to exclude Federal jurisdiction on the grounds that it takes place in the course of a legitimate business or labor dispute or in the pursuit of legitimate business or labor objectives.

We ensure that isolated acts of violence by picketers do not result in Federal prosecution by specifically making it an affirmative defense that the act of violence was minor or occurred in the course of otherwise peaceful picketing. As a result, a simple loss of temper on the picket line would not be prosecuted, but a calculated plan to use violence to achieve the union's goals during picketing would be prosecuted.

In a statement on this bill when it was before the Separation of Powers Subcommittee, Mr. Ray Denison, director of legislation for the AFL-CIO, submitted a statement in which he said, and I quote:

> Past congressional hearings have demonstrated that there is absolutely no factual substantiation to warrant the kind of sweeping usurpation of State and local law enforcement proposed by S. 462.

I believe that this hearing will show the fallacy of that statement and belief. Twenty members of the Senate are now cosponsors of this bill. It is important legislation, if for no other reason than the victims here today.

This is not a theoretical problem; it is a real problem; it is as real as Cher Mungovan of Hawaii. It is as real as John Ford of Oregon, as real as Robert Wohlsen of Pennsylvania, and all the others who have come here today to tell us of their experiences.

It is a fundamental belief in our society that all people should be equal in the eyes of the law. This legislation is a response to that belief and one which I am sure and confident the majority of my colleagues have as well.

I would now like to turn the meeting over to the chairman of the committee, Strom Thurmond, and then we will also have a statement by the Senator from Pennsylvania, Senator Specter.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The **Chairman**. Thank you, Mr. Chairman. I was called to the White House this morning, and I regret I was not here when the meeting began.

Today we shall receive testimony on S. 462, a bill to amend the Hobbs Act. This particular measure introduced on February 3 of this year by Senator Grassley is almost identical to S. 2189, which I introduced in the 97th Congress. In 1973 the Supreme Court decided *United States* v. *Enmons.* That case drastically limited the application of the extortion provisions in the Hobbs Act with respect to violence which occurs during the course of a labor dispute.

As I have said before, I would, if it were in my power to do so, put an absolute stop, without any compromise, to the disruption of commerce in this country by intimidation and violence, whatever its source.

S. 462 is necessary to ensure that those union officials and their agents who are not law abiding are subject to the same laws that apply to every other American. Of course, the Federal Government should not become involved in relatively minor physical altercations and vandalism that may occur during a labor dispute in the wake of charged emotions or flared tempers. Where such action is insignificant to the overall coercive effect of the legitimate strike, it is not extortion.

If, however, violence becomes a significant or overriding factor in settling commerce-related disputes, some governmental entity should step in to remedy the situation. If the State, or, local government fails to provide the remedy in these cases or where there is a clear Federal interest, then, the Federal Government should be empowered to act.

I feel that S. 462, of which I am a cosponsor, is an even-handed approach, covering only the conduct legitimately within the Federal interest.

I want to commend Senator Grassley for organizing this hearing for the full committee. On such a potentially volatile issue, it has been most helpful to have a man such as the distinguished Senator from Iowa upon whom to rely. Experience has shown me that Senator Grassley is objective and fair in his role as a legislator, and I am confident that the testimony this morning will be a credit to his efforts.

To those who may question the absence of a witness from organized labor, it should be noted that Senator Grassley extended an invitation to them to testify as early as last spring. They have declined, indicating that their position remains the same as when they last testified on this issue in the 97th Congress.

The hearing this morning is designed to receive testimony concerning acts of violence throughout the Nation, which make the enactment of this bill appropriate.

I also want to commend Senator East, the capable chairman of the Subcommittee on Separation of Powers. It was through his leadership that a hearing was held earlier this year on this measure, and that S. 462 was reported out favorably to the full committee in July.

It is a pleasure to welcome the witnesses here today, and I am certain that their testimony will be of great help to the committee in its deliberations. It is my desire that this hearing be perfectly objective, and that the true facts and only the true facts be brought to the attention of the committee on the subject in question.

If any member of this committee feels that another hearing should be held, he should contact Senator Grassley.

Thank you, Mr. Chairman.

Mr. Chairman, I have another engagement and cannot remain. Again, I want to commend you for the work you are doing on this important piece of legislation.

Senator **Grassley**. And I want to take this opportunity to thank you and the full committee staff who have been so helpful to us as well.

Senator Specter.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator **Specter**. Thank you, Mr. Chairman. Mr. Chairman, I appreciate the Chair's willingness to move Robert Wohlsen to the lead spot in the testimony today, because I must go to the Senate floor by about 10:30. We are taking up the Surface Transportation Assistance Act, and I have an amendment which I must offer where there are substantial Pennsylvania interests involved.

I think that the subject matter today is one of great importance, and I join Senator Thurmond and Senator Grassley in their statements condemning union violence or violence by individuals or violence wherever it may occur.

I have reviewed the situation with Mr. Wohlsen, and of course he will offer the live testimony, but I have learned that on June 8 of this year Mr. Wohlsen visited a construction site where he was assaulted by having punches to his head and body. He was thrown to the ground. He suffered a subdural hemorrhage, and he required brain surgery.

One concern that I have—and I discussed this with Mr. Wohlsen—is the action taken by the county prosecutors because there is jurisdiction for the district attorney to act in these situations. I have had experience as a district attorney and, in fact as an assistant district attorney some 21 years ago in 1962, I conducted the first prosecutions which evolved out of the McClellan investigations which were in the Senate and in the Judiciary Committee.

In 1957, 1958, and 1959, the McClellan committee investigated Teamster violence and set in motion an evidentiary base for prosecutions around the country. I was an assistant district attorney in Philadelphia. And in 1962 and 1963 we brought prosecutions against Local 107 Teamster officials who had done many things, including acts of violence on the picket lines.

They were all prosecuted at the county level; the six leading Teamster officials all went to jail as a result of that prosecution. And I am frankly dismayed when I hear that around the country some district attorneys are not taking action to bring violence to justice.

There are procedures in Pennsylvania where an injured party may petition the presiding judge of the Common Pleas Court if a district attorney fails to act or acts improperly. In those situations the private counsel may replace the district attorney on order of the court. The State attorney general under Pennsylvania has the responsibility and authority to supersede a district attorney who fails to act.

It may be if you have an epidemic situation across the country that there may have to be Federal action. I know that there is a reluctance to see the Federal Government expand jurisdiction where there is local authority, but if the local authorities are not going to act, that is quite another matter.

I have had first hand experience and I know that if the district attorneys do their job, these prosecutions will be brought and convictions will be obtained. And I am frankly very distressed to hear of Mr. Wohlsen's injuries. I have known Mr. Wohlsen for many years and know of his activities in the construction business in the Lancaster, PA, area. I very much appreciate, Mr. Chairman, the committee's willingness to take Mr. Wohlsen first. He is on the first panel in any event, but this will enable me to hear his testimony firsthand.

I thank the Chair.

Senator **Grassley**. I appreciate that, and we will, of course, now go to Mr. Wohlsen.

Before I introduce him, I would say that I appreciate the fact that the county attorneys, district attorneys in the State of Pennsylvania are doing their job. I think testimony today will bring out, though, that this is a very real problem. And I also would like to indicate for the benefit of the overall environment that we are in that six of the seven instances that will be referred to have just happened in the past summer as well.

Also, at this point, I wish to place a copy of S. 462 and a statement by Senator Denton in the record.

[Text of S. 462 with agency view and prepared statement of Senator Denton follow:]

II

98TH CONGRESS
1ST SESSION

S. 462

To amend section 1951 of title 18 of the United States Code, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1983

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend section 1951 of title 18 of the United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1951 of title 18 of the United States Code is amended as follows:

(a) Subsection (b)(2) is amended to read as follows:

"(2) The term 'extortion' means the obtaining of property from another, with his or her consent, induced by use of actual or threatened force, violence, or fear thereof, or wrongful use of fear not involving force or violence, or under color of official right.".

(b) Subsection (c) is amended to read as follows:

"(c) Nothing in this section shall be construed as indicating an intent on the part of the Congress—

"(1) to repeal, modify, or affect section 17, of title 15, sections 52, 101–115, and 151–166 of title 29, or sections 151–188 of title 45; or

"(2) to exclude Federal jurisdiction over the offenses defined in this section on the ground that the conduct is also a violation of State or local law, or that the conduct, if it involves force, violence or fear thereof, takes place in the course of a legitimate business or labor dispute or in pursuit of a legitimate business or labor objective.".

(c) A new subsection (d) is added to read as follows:

"(d) It is an affirmative defense to a prosecution under this section that the defendant's conduct—

"(1) was incidental to peaceful picketing in the course of a legitimate labor dispute, as defined in section 2(9) of the National Labor Relations Act, as amended (29 U.S.C. 152(9)); and

"(2) consisted solely of minor bodily injury, or minor damage to property not exceeding a value of $2,500, or a threat of such minor injury or damage; or

"(3) was not intended to extort property.".

RAM:JEP:CHC:djw
S 462

CARY

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

0 5 JUN 1984

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 462, a bill "[t]o amend section 1951 of title 18 of the United States Code, and for other purposes."

Recommendation

The Department of Justice recommends enactment of this legislation with suggested amendments. This bill and the amendments would nullify the effect of United States v. Enmons, 410 U.S. 396 (1973). It makes clear that the Hobbs Act punishes the actual or threatened use of force or violence to obtain property irrespective of the legitimacy of the extortionist's claim to such property and irrespective of the existence of a labor-management dispute. The Department proposes an amendment to S. 462 to establish as a bar to prosecution, rather than as an affirmative defense, the fact that incidental picket line violence occurred during an otherwise peaceful labor dispute provided such violence was of a minor nature and was not intended to obtain property.

Discussion

The Court held in Enmons that the Hobbs Act does not proscribe violence committed during a lawful strike for the purpose of achieving legitimate collective-bargaining objectives, like higher wages for genuine services that the employer seeks. By its focus on the motives and objectives of the property claimant who uses force or violence to achieve his goals, the Enmons decision has had several unfortunate results which make legislation overturning it necessary. First, it has deprived the federal government of the ability to punish significant acts of extortionate violence when they occur in a labor-management context. Although other federal statutes proscribe the use of specific devices or the use of the channels of commerce in accomplishing the underlying act of extortionate violence, only the Hobbs Act proscribes a localized act of extortionate violence whose economic effect is to disrupt the channels of commerce. The Justice Department does not view other federal statutes as adequate vehicles of avoiding the full effect of the Enmons decision.[1]

---

[1] See, e.g., United States v. Thordarson, 646 F.2d 1323 (9th Cir. 1981), cert. denied, 454 U.S. 1055 (1981), holding that the Enmons decision has no application to prosecution for destruction of property used in interstate commerce by explosives (18 U.S.C. 844(i)), travel in interstate commerce to commit arson (18 U.S.C. 1952), conversion of union funds (29 U.S.C. 501(c)), and conspiracy to conduct an enterprise through a pattern of two or more racketeering acts of arson or embezzlement (18 U.S.C. 1962).

Although we support the efforts of State and local law enforcement authorities in their attempt to punish labor-management violence by the means which are available to them, we think that the federal government has a responsibility to assist State and local authorities in those instances of serious, extortionate violence which disrupt the collective bargaining process just as the federal government is able to provide assistance in other situations where the underlying acts of violence are also violations of State law. See United States v. Culbert, 435 U.S. 371 (1978) (application of Hobbs Act to bank extortion).

Second, the rationale of the Enmons decision is not consistent with federal labor law. Although Enmons states that the "wrongful" use of force, violence, or fear under the Hobbs Act is judged by the standard of "wrongful" goals, the use of force or violence itself, apart from the user's ultimate objectives, is "wrongful" under federal labor law. See, e.g., NLRB v. Drivers Local Union, 362 U.S. 274, 291 (1960), where the Supreme Court, quoting an earlier decision of the National Labor Relations Board, distinguished the Board's limited authority over peaceful picketing and its ability under section 8(b)(1)(A) of the Taft-Hartley Act (29 U.S.C. 158(b)(1)(A)):

> . . . to insure that strikes and other organizational activities of employees were conducted peaceably by persuasion and propaganda and not by physical force, or threats of force, or economic reprisal. In that Section, Congress was aiming at means, not ends.

(Citation to quoted matter omitted.)

Third, the Enmons decision forces prosecutors to consider fine questions of whether or not the labor goals sought by those persons making property demands are otherwise legitimate under federal labor law. Federal labor law affords disparate treatment to different industries and economic interests which may often have no relationship to whether disputes in these industries may be accompanied by violent injury to persons and property. For example, the National Labor Relations Act, as amended, generally outlaws the making of economic demands on neutral employers who are not parties to the primary labor dispute, but exempts the garment and construction industries from those restrictions in certain cases. See, e.g., United States v. Stofsky, 409 F. Supp. 609, 614-617 (S.D.N.Y. 1973), aff'd. on other grounds, 527 F.2d 237 (2d Cir. 1975), cert. denied, 429 U.S. 819 (1976), dismissing a Hobbs Act prosecution in relation to a garment industry dispute.

Finally, parties to labor-management disputes are afforded an exemption from the statute's broad proscription against violence which is not available to any other group in society. The Enmons decision has encouraged Hobbs Act defendants to argue the reasoning of Enmons outside the labor-management context. We are aware of five United States Courts of Appeal that have indicated to date, in cases which did not involve labor disputes, that Enmons should be confined to its labor facts and not applied to cases involving the use of force or fear to settle contractual disputes among businessmen, to effect the collection of debts, and to solicit political contributions. United States v. Warledo, 557 F.2d 721, 726-30 (10th Cir. 1977); United States v. Cerilli, 603 F.2d 415, 419-420 (3rd Cir. 1979), cert. denied, 444 U.S. 1043 (1980); United States v. French, 628 F.2d 1069, 1075 (8th Cir. 1980), cert. denied, 449 U.S. 956 (1980); United States v. Porcaro, 648 F.2d 753, 760 (1st Cir. 1981); United States v. Zappola 677 F.2d 264,(2d Cir. 1982), cert. denied, sub nom. Melli v. United States, 103 S. Ct. 145 (1982). None of these cases has clearly laid the so-called "claim of right" defense to rest inasmuch as the courts also found alternative grounds for reaching their decisions in these cases. Nevertheless, we believe that the opinions in these cases do represent a definite trend in the federal courts toward the isolation of the

Enmons decision to its labor context. S. 462 would make clear that the Hobbs Act punishes the actual or threatened use of force and violence which is calculated to obtain property without regard to whether or not the extortionist has a colorable claim to such property and without regard to his status as a labor representative, businessman, or private citizen.

Proposed Amendment of Subsection (b)(2) of the Act

The proposed definition of extortion in subsection (b)(2) of 18 U.S.C. 1951 clearly distinguishes the "use of actual or threatened force, violence, or fear thereof" from the "wrongful use of fear not involving force or violence" as independent predicates of prosecution. "Fear" under the Hobbs Act has been interpreted in a long line of cases to reach extortionate conduct predicated solely on fear of economic loss or injury. Economic coercion by labor unions in the form of strikes and work stoppages during the course of otherwise peaceful labor disputes is recognized as an appropriate means of achieving legitimate labor objectives. S. 462 makes clear that property demands in the form of wages for necessary labor and legitimate employment benefits could never become the subject of a Hobbs Act prosecution when such demands were backed only by peaceful strikes, work stoppages and picketing. Purely economic pressures would continue to be a basis for Hobbs Act extortion only where the alleged extortionist's claim to property was clearly "wrongful," as for example, in the case of demands for personal payoffs, wages for unnecessary labor, and payments prohibited by section 302 of the Taft-Hartley Act, 29 U.S.C. 186.

Proposed Subsection (c)(2) of the Act

S. 462 also deals with the Enmons issue by adding a statement of Congressional intent in new subsection (c)(2) of 18 U.S.C. 1951 to the effect that prosecution may be undertaken in regard to conduct which takes place in the course of a legitimate business or labor dispute if such conduct involves "force, violence, or fear thereof." Extortionate conduct involving only fear of economic loss in the context of a legitimate business or labor dispute is not included in the statement and therefore would continue to be exempt from prosecution unless the alleged extortionist had a "wrongful" claim to the property demanded. This distinction is fully consistent with the separate treatment of violent and non-violent conduct by the bill's proposed definition of extortion.

Although the phrase "force, violence, or fear thereof" is the same as that used in the bill's proposed definition of extortion, we read the statement as being generally applicable to any violent offense under the Act as amended. For example, although we are unaware of any attempt to impose the reasoning of the Enmons decision on the robbery provision of the Act, we see no reason why any claim of right should be a defense to the use of actual or threatened violence to obtain a victim's personal property by robbery as opposed to extortion. Moreover, because the proposed definition of extortion in S. 462 and the existing definition of robbery in subsection (b) of the Act would continue to apply the Hobbs Act to both the actual and the threatened use of violent conduct, we recommend that subsection (c)(2) include language which clearly indicates that the statement of intent shall apply to the "use of actual or threatened force, violence, or fear thereof."

The proposed statement of intent also contains language which would permit federal prosecution under the Hobbs Act despite any asserted defense that the alleged conduct is also a violation of State or local law. This language is in accord with existing case law which rejects the argument that Congress did not intend to proscribe as a federal crime under the Hobbs Act conduct which it knew was already punishable under State robbery and extortion statutes. United States v. Culbert, supra.

Proposed Section (d) of the Act

The affirmative defense in proposed subsection (d) of 18 U.S.C. 1951 is consistent with the view of the Department of Justice that minor, incidental violence which sometimes occurs in the course of a labor dispute among those at a picket line is not ordinarily designed for extortive purposes, i.e., "the obtaining of property from another," but generally arises from the emotional intensity of the participants to the dispute. Without a demonstrated, purposeful linkage of those who demand property and the deliberate commission of acts of violence to enforce those demands, the government cannot support its burden of proof for extortion. See, e.g., United States v. Glasser, 443 F.2d 994, 1008-9 (2d Cir.), cert. denied, 404 U.S. 654 (1971), reversing conviction under the Hobbs Act with respect to particular acts of violence which the government was unable to prove were undertaken at the instruction or direction of the defendant, a union official, as part of his scheme to obtain property, but which may have been undertaken by union members on their own initiative.

Therefore, although it may be redundant as a technical matter to state in S. 462 the position that minor, incidental picket line violence is not subject to the Hobbs Act, the Department agrees with the drafters of the bill that this position should be expressed in it. Assistant Attorney General Jonathan Rose has previously urged the Congress to express this exception to liability in the statute itself in order to allay the concerns of those who may feel that the statute might otherwise be applied to incidents of picket line violence and not just to clear cases of extortion.[2]

Although the affirmative defense in proposed subsection (d) of 18 U.S.C. 1951 essentially sets forth criteria which the Department finds appropriate, we prefer formulating it as a bar to prosecution. The issues relevant to these criteria can be disposed of at an earlier stage of prosecution -- preferably, through pre-trial motions -- if S. 462 establishes the criteria for a bar to prosecution, rather than an affirmative defense. The earlier resolution of these issues would benefit defendants who have a valid claim that the Hobbs Act is inapplicable to their case. In this regard, we believe S. 462 should also be amended to include a statement of Congressional intent that nothing in 18 U.S.C. 1951 shall be construed to chill legitimate labor activity by authorizing federal prosecution for offenses occurring during a labor dispute which do not involve extortion. This statement of Congressional intent is based on a statement contained in S. 2189, 97th Cong., 2d Sess. Accordingly, we recommend that S. 462 be amended by striking lines 14 through 24 from page 2 of the bill and by adding in subsection (b) of the bill the following new subsection (c)(3) to 18 U.S.C. 1951:

> "(c) Nothing in this section shall be construed as indicating an intent on the part of the Congress --
>
> "(3) to chill legitimate labor activity by authorizing Federal prosecution for offenses occurring during a labor dispute which do not involve extortion. This intent would preclude prosecution under this section of conduct which is incidental to peaceful picketing in the course of a legitimate labor dispute, as defined in section 2(9) of the National Labor Relations Act (29 U.S.C. 152(9)), and consists solely of minor bodily injury, or minor damage to property, or a threat of such minor injury or damage, and is

---

[2] Statement of Jonathan C. Rose before the Senate Subcommittee on Criminal Law concerning S. 613, 97th Cong., 1st Sess., Dec. 10, 1981. The language we offer would preclude the application of this exception in factual situations which would support prosecution under the robbery provision of 18 U.S.C. 1951.

> not intended to obtain property. Such excluded offenses shall continue to be subject to prosecution by State and local authorities having jurisdiction over them.".

In addition, we recommend deleting the word "or" at the end of proposed section 1951(c)(1), page 2, line 6, and revising line 13, page 2 to read: "labor objective; or".

It should be noted that in our formulation of the bar to prosecution in proposed 18 U.S.C. 1951(c)(3), all three criteria listed in S. 462's affirmative defense must be met. Under S. 462 a defendant can meet the affirmative defense requirements by showing that his conduct (1) was incidental to peaceful picketing in the course of a legitimate labor dispute and either (2) consisted solely of minor bodily injury or minor damage to property or (3) was not intended to extort property. The Department's proposed formulation of the bar to prosecution requires the presence of all three factors in order to assure that extortionate conduct is not inadvertently excluded from the statute's coverage.

In addition, the third criterion in the Department's bar to prosecution is slightly different from the final criterion in S. 462's affirmative defense. Our proposed language excepts conduct which is not intended "to obtain property"; S. 462 uses the words "to extort property." We recommend our language to avoid inadvertently excusing conduct which amounts to robbery under the statute. Finally, although our proposed bar to prosecution does not define minor damage to property by any dollar amount, we have no objection to the $2,500 figure used in S. 462.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnel

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

PREPARED STATEMENT OF THE HONORABLE JEREMIAH DENTON

Mr. Chairman, I thank you for the opportunity to express my continued support for S. 462, a bill to address the Supreme Court's mistaken interpretation of the Hobbs Act in its 1973 decision in *United States* v. *Enmons,* 410 U.S. 396.

The bill introduced by the distinguished Chairman with my cosponsorship and that of nineteen other Senators, would amend the federal extortion and robbery statute (the Hobbs Act, 18 U.S.C. sec. 1951) to allow criminal prosecution of individuals involved in violent, extortionate labor union tactics. It would allow for the punishment of individuals who use or threatened the use of force or violence.

Moreover, the passage of the bill would correct the *Enmons* decision, which held, in effect, that the legitimacy of the ends sought by union agents—contract concessions—excepted them from prosecution under the Hobbs Act for the use of wanton destruction as a means to force employers to accede to their demands. If we follow the "end justifies the means" rationale of *Enmons,* we condone the systematic destruction of property and the maiming or killing of innocent individuals.

The legislation would not interfere with the right of workers to strike for higher wages. Its provisions would come into effect only if a strike goes beyond the mere withholding of labor to include shooting, dynamiting, and burning directed against resisting employers and non-striking workers. S. 462 explicitly exempts minor incidental incursions. If the defendant's conduct consisted solely of a minor bodily injury, or minor damage to property not execeeding $2,500,000, that would be an affirmative defense to a prosecution under the bill. We need the peacefulness that the legislation would bring. We need teamwork and cooperation in the workplace, not extortion and violence.

I continue to believe that S. 462 is of great importance, I encourage my colleagues to act swiftly to report it to the floor.

Senator GRASSLEY. Our first witness, then, is Mr. Robert Wohlsen. He is president of the Wohlsen Construction firm located in Lancaster, PA.

Mr. Wohlsen, we are happy that you can be here in light of the injuries that already have been referred to and injuries which you suffered. I understand that we will be viewing a video tape, and we would like to have you recall some of the things, maybe before we open, of what we will be seeing. And I would also like to suggest to the entire audience that you may be aware of a great deal of profanity and other words that you do not hear every day referred to in this videotape. So be prepared for that sort of language. Mr. Wohlsen.

STATEMENT OF ROBERT WOHLSEN, SR., PRESIDENT, WOHLSEN CONSTRUCTION, LANCASTER, PA

Mr. WOHLSEN. Thank you very much, Senator.

I am a bit emotionally upset this morning to think that we are able to have this hearing in this great country of ours with what I know is the weight of the world upon your shoulders at this point.

What we profess to tell you about today is incidental or trivia to what the other decisions that you have to make today are.

I am very, very pleased that you have given us this opportunity, and I thank you extremely for your being present.

As was mentioned, I am the president of a medium to large construction company in the Pennsylvania, Maryland, and Delaware area. I am the third generation of its founder, which was founded by an itinerant carpenter in 1890, an immigrant from Germany.

Now, the reason I tell you this background is that I am not someone that has come on the scene in the past 10 to 15 years. I feel as though that I am well knowledged in my profession. I have been well trained by my family. I, too, have earned by claws as a carpenter, and I can pound those nails. I cannot pound them as straight as I used to be able to. But I can pound them.

I, too, have sweated and loaded the trucks, so I come at this from a knowledge of the entire industry. I have worked with my family. My father and uncles are deceased. I am the youngest member of the third generation, and all my brothers and cousins are no longer with me in the business. They are either deceased or retired. So that is why I am president of the company, in essence, in a family business.

It is now backed up by younger engineers, professionals who are not Wolhsens. Is open as a corporation for their buying of stock. My son, Robert, Jr., is a member of the company. And I feel as though that over the years I have had ample opportunities and experiences of dealing with all types of labor negotiations and meetings and confrontations. I would like you to know that in the early part of my being a carpenter and my workings with the company—until 1962 we operated as an entirely union organization.

In the 1962 era it was decided by the men in our employment that they no longer wanted to be a part of the union organization, that they could fare better by being nonunion members, and that they could live by their convictions a bit more tolerable than those that were being fostered at that time in our area.

Therefore, we became an open shop contractor, and to this day we are totally open shop. Open shop is the term used whereby it is no concern of ours as to whether a man, a carpenter or a laborer is a union individual; we do not ask. We have no problems with the purchasing of all the other subcontractors that we purchase for the construction of a building. We do not ask whether your plasterer is a union man or your roofer is a union man. We are totally open shop, and it makes no difference to us whether you belong to the union or not.

This is where we get into trouble. At our most recent job at the Doylestown Hospital where we were picketed by the Philadelphia Building Trades Council, the two subcontractors on the job at that time, one being the caisson contractor was a union organization, and after our discussions with them, they then began to realize that 50 percent of all the trades that would be on the job throughout the 2-year period would be union organizations, which is no concern to us at all.

That being the case, I very humbly say that that is why I am here today, as a president of a small corporation. But I think of myself more as a representative of the building trades, the construction industry, and perhaps I can add a bit of knowledge and emphasis to what we have had to go through the past many years.

On the day of June 7, I was at a jobsite in the Brandywine area, and I was told that there were union pickets picketing the jobsite at that time, and that would I go over and find out what was happening.

My initial reaction was, oh, my heavens, I really do not need this this week. Must I go through this? I went to the jobsite and found that there were 70 picketers blocking the driveway to the Brandywine River Museum; also not only blocking me, but also the schoolchildren and their buses not being able to go into the museum and look at the great works of the Wyeths and everybody else that is displayed in that museum.

I was given access to the road. The picketers allowed me in. I identified myself to the gentleman that was in charge, and we had a very nice conversation, and I gave him my business card, and he told me his name. And in essence he said, oh, a couple of us boys—you know, you are not union, so we have to let it be known that we disapprove of you. I said, very good, good day.

And with that we departed and made preparations for our coming on the jobsite on June 8, 1983. Those preparations included our planning to arrive in a car with my attorney, Mr. Harmon, who is seated behind me, to guide us in the manner in which we are to proceed; a cameraman with a video camera, which just happens to be my son-in-law, myself, and a project engineer.

When we arrived at the jobsite, we were denied access, and there was a volatile demonstration of anger at our being there. We also had notified the Pennsylvania State Police the day before, and we asked them to be present from 6:45 so that we could have access to their jobsite, which would include my construction crew, ourselves, and our equipment.

Milk was poured over the windshield of our car, which if they have it in the tape you will see that. That is no big deal. You turn on the wipers and it goes away.

They beat on the car, and they allowed us to pass through. We proceeded down the road for 500 feet and stopped the car in front of our jobsite, and to the left the road turns, and down there were another group of picketers. I asked Mr. Snoke to see if he could arouse the State police, which he went into the museum and called the State police.

I thought that my general superintendent would have been there and also thought that my men would have been at the site and also that our equipment that was coming on the jobsite would have been there.

I found out at that point that we were in the jobsite and we were surrounded on both sides of the road, the access to the job, by picketers.

After Mr. Snoke came back from checking on where the State police were, I looked up and I saw that Mr. Rick Harmon was being assaulted by Mr. Earl Henninger, who is the head of the Philadelphia Building Trades Council union members. He is the head of it.

I was quite surprised to see this. Someone had ahold of his foot, and at that time they were pouring hot coffee on him. He did extract himself from that group, and he came back to where we were, and at that time we ran down to the group of picketers to find out what was going on.

They did not like our taking pictures. That is the only way that we can go into court to get the temporary injunction is to furnish the judge with some evidence that we are being prohibited from performing our work.

During this process, which took all of about 2 minutes, we were continually harassed, and this is all very vivid to me, but it happened so quickly. We took pictures, and they were attacking the cameraman. And out of nowhere—I had my hardhat on—I know it looks a little hotdoggish, but you have to have all these places to get in and out.

And someone came up and gave me a roundhouse blow to the side of my head. And that went flying and my glasses went flying.

And the only reaction I had was that the—the blow and the hardhat came in and made an indention on my skull. The only reaction I had, as I said before, was I gritted my teeth, and I said, oh, that hurt.

Senator **Grassley**. Mr. Wohlsen, at this point Senator Specter would like to ask you a question.

Senator **Specter**. Well, no, I would want to hear you out, Mr. Wohlsen, then I would want to ask you a couple of questions. I would just ask the chairman if it would be permissible for me to ask you a couple of questions before I depart. But I did not intend to interrupt your testimony.

Senator **Grassley**. I am sorry; no, that is fine.

And also we want to hear the video tape before you ask questions. We should, too.

Senator **Specter**. Well, what I would like to do is hear Mr. Wohlsen, I am late for the floor, but if we can hear you finish the basic sequence, there are a couple of things I would like to ask you about.

Senator **Grassley**. That is all right with me, Mr. Wohlsen and Senator Specter; so, proceed.

Mr. **Wohlsen**. I am trying to condense this from the five pages. So I will keep moving. Thank you.

At that time there was a continual attack on the camera operator, and his camera was ripped out of his hands, and was on the ground, and I was taking snapshots with a little Instamatic camera that I had.

ATTACK CAUSED BRAIN HEMORRHAGE

Senator **Specter**. Mr. Wohlsen, were you struck on one occasion or more than one occasion?

Mr. **Wohlsen**. I was struck twice, sir.

Senator **Specter**. And when was the second occasion when you were struck?

Mr. **Wohlsen**. I was observing the demolition and the stomping on the video camera with horror, and my reaction to that was—it is funny how things come into your mind—well, they are sure not made of much. There was plastic flying all over the place.

Senator **Specter**. Were you struck with a weapon, to your knowledge, Mr. Wohlsen?

Mr. **Wohlsen**. To my knowledge, I was not.

Other than—I have great opinion that the roundhouse blow on my head—someone had to have something in their fist because it hurt too much.

These are the example of the rocks that were being thrown at our vans, our pickup trucks, and what have you, and I think you will see someone pick up a rock such as this.

After the camera was destroyed, the only thing I remember after that, someone blindsided me. It did not come from the front. It is like a football player being blindsided. And that hurt. And I went to the ground. There were several people on top of me. And the only thing that went through my mind was, please, God, do not kick me too hard.

So there was a lot of pummelling and carrying on and fortunately for us, me, they did get up. I got up and was helped up by the people that were with me. And I did not know at that time that the camera that I had in my pocket was gone.

I stood around looking for my camera, but it had disappeared, naturally.

Senator SPECTER. And you sustained a subdural hemorrhage?

Mr. WOHLSEN. At that particular time I had headaches and pulled neck muscles and a wrenched arm. And I checked my physical being out with a doctor that afternoon and touched my nose and all that, and he felt as though there was nothing wrong with me, other than sprained muscles, and what have you.

I was not bloody. I was not cut. I was not in any way, shape, or form a bloody mess.

Senator SPECTER. But did you later have brain surgery?

Mr. WOHLSEN. I did. I learned a lot about this in the past several months. Apparently there was a hemorrhage that took place between the skull and the membrane around the brain. There are liquids, and so forth, that attack the blood, and as that gets bigger it puts pressure upon the brain, which necessitated my going to the hospital on July 4 on my weekend off and having an operation on the brain to relieve the pressure.

Senator SPECTER. Mr. Wohlsen, I have just two other questions because I have to leave. And that is, as I understand it, you instituted injunctive action in the Court of Common Pleas and got an injunction against this kind of picketing activity?

Mr. WOHLSEN. That is correct; the evidence was taken to the judge, the file, the video tape, and it was shown to the judge, and he gave us a temporary injunction and then subsequently gave us a permanent injunction.

Senator SPECTER. And there is a criminal prosecution which is now pending on the affidavits of the Pennsylvania State Police, but that prosecution is limited to a misdemeanor charge and a simple assault and battery charge?

Mr. WOHLSEN. They are pending and they are still on the record. And I am told—I would have to have counsel advise me on this—but all the charges would only result to a simple assault or misdemeanors, et cetera.

Senator SPECTER. But there is no charge for aggravated assault and battery?

Mr. WOHLSEN. No, sir.

Senator SPECTER. Perhaps counsel could supplement it. I got this information in advance, but I think it is important to put on the record the scope of the prosecutions which are pending.

Counsel, could you supplement that for the record, please.

Senator GRASSLEY. Would you stand and speak into the microphone and introduce yourself.

Mr. HARMON. My name is Rick Harmon. I am labor counsel for Wohlsen Construction Co., and I was present at the site on June 8, 1983 when the incident took place.

Senator **Specter**. And what criminal charges are now pending arising out of this incident, if any?

Mr. **Harmon**. The criminal charges which are now pending that arose out of the incident result or boil down to a simple theft involving the construction company's video camera, which was taken, some personal belongings, which belonged to men on the construction crew, which were forcibly taken by the union, and a charge of simple assault. I was told by the State police that that was the charge that would be filed against the union individuals, basically because the State police were not there and did not firsthand observe the actual hitting and bludgeoning of Mr. Wohlsen.

Senator **Specter**. And who are the named defendants?

Mr. **Harmon**. Earl Henninger, a carpenter's business agent is the one individual named as a defendant, and that involves a simple assault against me. The other—there are three other individuals, all members of the trades council, which are named defendants.

Senator **Specter**. Well, if you could supply the names, we would appreciate it.

Mr. **Harmon**. I will.

Senator **Specter**. And my final question is, Have you made any application for other criminal charges? That is, have you filed an affidavit seeking a criminal charge for more serious offenses such as aggravated assault and battery?

Mr. **Harmon**. No, sir. It was not until we actually took still pictures from the video tape and had them blown up that we even noticed that the gentleman who hit Mr. Wohlsen along the side of his head and we believe caused the injury which resulted in the subdural hematoma had what appeared to be a rock in his fist when he hit him along the side of the head. That is in one of the photographs which I believe have been supplied to the committee.

Senator **Specter**. Well, there is ample time to do that. Under Pennsylvania law there is a 2-year period during which that can be brought.

Senator **Grassley**. Just a minute. Did you request that the police be there ahead of time?

Mr. **Harmon**. Yes, sir, I contacted the police——

Senator **Grassley**. And were they there?

Mr. **Harmon**. No, they were not. And this, I might add, is a continual problem throughout the construction industry, is the lack of cooperation from local and State officials in protecting jobsite security and in preventing violence.

It does not do a lot of good after a gentleman such as Mr. Wohlsen has been attacked to file a simple assault charge.

Senator **Specter**. Mr. Chairman, I thank the Chair for permitting me to question out of turn. I thank Mr. Wohlsen for being here. And I would like to say to you, Mr. Wohlsen, and to the Chair and to all those assembled, that I will review the transcript and if possible I would like to have an opportunity to see the video tapes as well. I regret that I cannot do it now, but I shall do that. Thank you very much.

Senator **Grassley**. Due to time constraints, I think we will go immediately to the video tape, and I think you could leave that the way it is and I will go down there and view it from down there and then maybe everybody will be able to participate.

Mr. **Wohlsen**. Please bear in mind this is an unprofessional cameraman.

[Video tape shown.]

Those are the picketers. That is our—where we get food, coffee truck. This is Rick Harmon walking toward us, followed by Mr. Henninger in the white shirt. That is me.

Senator **Grassley**. Mr. Wohlsen, I think that we will let you finish your statement and then we will go to the other witnesses, and I will have questions of all of you at the end of the panel testifying.

So, will you complete your statement, and I hope that you can do it shortly.

Mr. **Wohlsen**. That was basically the extent. The State police arrived. They did restore order. Our men were allowed in. Our trucks—tires were slashed even with the State police present. Our hydraulic hoses were cut, et cetera.

Basically we came down the next day and we did have the temporary injunction, and it was served by the sheriff. The union people did not want to talk to me. They bargained, they wanted me to drop the criminal charges and there would be no one on the jobsite. And we said no bargain, but Mr. Harmon dealt with them, and as of this date, there has been no pickets or anybody on the jobsite and any other jobs in our particular area.

I would like to infer that our company as well as other companies are well thought of and I would like to tell you that people want us to do work for them. We are skillful. We are on time and we are economical.

So the huge hospital construction is going around in that general area. The architects like us; it is difficult to build a hospital.

We go before their boards and we have not been able, in some instances, to be chosen or asked to bid because of the incrimination and the harassment that the boards get from such people. It scares them half to death. I just do not know. I read the Hobbs Act, too, over the weekend and the amendments, and I would hope that something would come of that, that we do not have to live under this fear. And I know nobody really wants a world to act in that manner. I am just an example of someone that survived. There are a lot of people that did not survive.

I was pretty sick. I would hope you would pay attention to what we have to say and all of us, and I do not want to take the time from the rest of the people that are going to testify.

I would like something to be done so that we could be able to have protection so we do not have to go through what I went through just to gather evidence. And from a personal standpoint, about the only bitterness I have within me is I am not as young as I look.

I do think that what has occurred to me has in some way, sense, or form has given me a different insight. It is not very nice to rub your head like this and it feels like washboard, which will go away. And I do not really have this haircut normally. It has not grown out yet. But also when I go like that, there is a 3-inch hole there. I do not really go for that. I know that will all heal up and the skull will come back together.

But I am indignant about it. I also am not as strong as I used to be. I can only work now until about 9 o'clock at night. But I am a runner. And this has really gotten to me. I cannot run right now; physically, I cannot. I will. And it is just something I would like to, from my own personal standpoint and my own selfishness—my intention was to run a marathon 3 weeks ago. And I could not run that. But a part of that marathon trip was to visit my son, Thomas, in Hapan, and his wife who I have not seen for over a year, who is an officer—who is an officer aboard a guided missile cruiser with the 7th Fleet in the Japanese—China Sea.

And I do not like that that was denied me. And I thank you, everyone, for giving me the opportunity to state my views.

[Material referred to follows:]

STATEMENT OF ROBERT S. WOHLSEN, SR.

OF THE ASSOCIATED BUILDERS AND CONTRACTORS

MY NAME IS ROBERT S. WOHLSEN, SR. I AM THE PRESIDENT OF WOHLSEN CONSTRUCTION COMPANY WHICH IS A LARGE GENERAL CONSTRUCTION FIRM LOCATED IN LANCASTER, PENNSYLVANIA. MY FAMILY IS IN ITS FOURTH GENERATION IN THE CONSTRUCTION INDUSTRY AND I HAVE WORKED IN CONSTRUCTION FOR OVER 50 YEARS MYSELF. WE HAVE AN ANNUAL VOLUME IN EXCESS OF $20,000,000 AND CONDUCT BUSINESS THROUGHOUT THE MID-ATLANTIC REGION. WE ARE A MEMBER OF ASSOCIATED BUILDERS AND CONTRACTORS. OUR COMPANY IS NON-UNION BECAUSE OF OUR EMPLOYEES HAVE CHOSEN TO BE NON-UNION. AS A GENERAL CONTRACTOR, WE REGULARLY EMPLOY HUNDREDS OF SUBCONTRACTORS THROUGHOUT THE COURSE OF A YEAR. IN TERMS OF DOLLAR AMOUNT, THE WORK OF OUR SUBCONTRACTORS OFTEN EXCEEDS THE VALUE OF THE WORK THAT OUR COMPANY ACTUALLY HANDLES ON THE PROJECT. OUR COMPANY HAS A FIRM, LONG STANDING AND WELL-KNOWN POLICY OF AWARDING SUBCONTRACTS TO CONTRACTORS REGARDLESS OF WHETHER THEY ARE UNION OR NON-UNION. BY THAT I MEAN TO SAY THAT AS A NON-UNION GENERAL CONTRACTOR WE DO NOT EVER INSIST THAT ALL OR ANY OF OUR SUBCONTRACTORS BE NON-UNION. OUR COMPANY HAS ALWAYS AWARDED SUBCONTRACTS ON THE BASIS OF ABILITY, EXPERIENCE, REPUTATION AND PRICE. WE WORK IN PEACE AND COOPERATION WITH UNION AND NON-UNION SUBCONTRACTORS AND THEIR EMPLOYEES.

I OFFER THIS INTRODUCTION TO DEMONSTRATE THAT WE ARE NOT NOVICES OR NAIVETIES TO THE CONSTRUCTION INDUSTRY. NOR ARE WE "AGITATORS" OR "TROUBLEMAKERS" SEEKING TO DO BATTLE WITH THE UNIONS. OUR POSITION, ATTITUDE AND REPUTATION IN THE AREA OF LABOR RELATIONS POLICIES MAKES THE INCIDENT OF VIOLENCE WHICH I AM ABOUT TO DESCRIBE EVEN MORE INCOMPREHENSIBLE AND HORRIFYING.

ON MAY 3, 1983 WE WERE AWARDED A CONTRACT FOR THE CONSTRUCTION OF A NEW WING TO THE BRANDYWINE RIVER MUSEUM IN CHADDS FORD, DELAWARE COUNTY, PENNSYLVANIA.

ON JUNE 1, 1983, WE ACTUALLY COMMENCED WORK ON THE SITE. ON JUNE 7, 1983 APPROXIMATELY 70 PICKETS FROM THE PHILADELPHIA AREA BUILDING AND CONSTRUCTION TRADES COUNCIL WERE BUSSED TO THE SITE AND COMMENCED PICKETING. THE PICKETS CAUSED A TREMENDOUS AMOUNT OF DISRUPTION AND WERE CONTINUOUSLY DENYING US ACCESS TO THE PUBLIC ROADS WHICH SERVICED THE CONSTRUCTION SITE. THE PICKETS PREVENTED VISITORS FROM ENTERING THE MUSEUM AS WELL. WE NOTIFIED LOCAL POLICE AND THE PA. STATE POLICE. WE ALSO REQUESTED THAT THE STATE POLICE BE PRESENT THE NEXT MORNING IN ORDER TO CONTROL THE PICKETS.

ON JUNE 8, 1983, I, WENT TO THE JOB SITE ALONG WITH OUR PROJECT ENGINEER KEVIN SNOKE, RON EPPS THE CAMERAMAN AND OUR COMPANY'S LABOR ATTORNEY, HARRY R. HARMON. WE ARRIVED AT THE INTERSECTION OF U.S. ROUTE 1 AND OLD STATION ROAD WHERE YOU MUST TURN TO GET IN TO THE MUSEUM. APPROXIMATELY 70 PICKETS WERE LINED UP ACROSS THE INTERSECTION PREVENTING ANY KIND OF TURN ONTO THE STREET. SEVERAL OF THEM BEAT ON OUR CAR AND ONE OR MORE OF THEM POURED A WHITE LIQUID ALL OVER OUR WINDSHIELD. I MIGHT ADD HERE THAT U.S. ROUTE 1 IS A VERY BUSY, CONGESTED FOUR LANE HIGHWAY. BY ABRUPTLY STOPPING OUR TURN ONTO THE SECONDARY ROAD THE PICKETS WERE NOT ONLY PUTTING US IN DANGER BUT, CREATING A VERY DANGEROUS OBSTRUCTION TO UNSUSPECTING ONCOMING TRAFFIC AS WELL.

OUR CAR FINALLY MADE IT THROUGH THE PICKETS. WE THEN DROVE BACK THE ROAD APPROXIMATELY 1/4 MILE TO THE ACTUAL LOCATION OF THE CONSTRUCTION PROJECT. WE GOT OUT AND KEVIN SNOKE AND I WENT TO CALL THE STATE POLICE AND FIND OUT WHY THEY WERE NOT AT THE SITE. OUR CONSTRUCTION CREW AND MEN WOULD BE ARRIVING SHORTLY AND HELP WOULD BE NEEDED. RON EPPS AND HARRY HARMON WENT TO TAKE PICTURES OF A SECOND PICKET LINE WHICH HAD BEEN SET UP ALONG ANOTHER PUBLIC ACCESS ROAD.

WITHIN A FEW MINUTES, I STARTED TO RETURN TO THE CAR. I IMMEDIATELY NOTICED THAT A GROUP OF HOSTILE PICKETS WERE ATTACKING HARRY HARMON, OUR COMPANY'S LABOR ATTORNEY. MR. HARMON WAS NOT OFFERING ANY RESISTANCE BUT RATHER WAS LETTING THE UNION MEN ALONE AND THEY WERE PUSHING

HIM ALONG THE ROAD. OUR VIDEO TAPE CAMERA, RUN BY RON EPPS, HAS SOME FOOTAGE OF THIS PARTICULAR EPISODE. I RAN TO THE ASSISTANCE OF MESSRS. EPPS AND HARMON AND ALSO YELLED TO KEVIN SNOKE TO COME ALONG. I PROCEEDED TO TAKE A PICTURE OF A UNION PICKETER THROWING HOT COFFEE OVER MR. HARMON'S HEAD AND TOOK PICTURES OF SEVERAL OF THE MEN WHO HAD ATTACKED MR. HARMON. AT THAT POINT IN TIME ONE PICKET CAME UP AND STOOD TWO INCHES IN FRONT OF MY FACE AND SPIT IN IT. I TOOK NO AGGRESSIVE ACTION BUT RATHER STOOD STILL AND REMAINED CALM. I WAS SHOVED A FEW TIMES AND THEN ANOTHER PICKETER CAME UP AND BEGAN PUSHING ME AROUND VERY HARD. HE DRAW BACK HIS LEFT ARM, SIDEWINDER FASHION, AND HIT ME ALONG SIDE THE RIGHT SIDE OF MY HEAD, KNOCKING OFF MY CONSTRUCTION HARD HAT AND MY EYEGLASSES. THIS SAME INDIVIDUAL THEN SHOVED ME AGAIN, AND KICKED THE HARD HAT OFF THE ROAD AND TRIED TO STEP ON AND BREAK MY GLASSES. A FEW MOMENTS LATER ANOTHER PICKETER RAN UP AND SPIT DIRECTLY IN MY FACE AGAIN. THEN HE STRUCK ME IN THE FACE. NEXT HE AND ANOTHER PICKETER GRABBED ME AND THREW ME TO THE GROUND WHERE THEY BEGAN TO KICK AND PUNCH ME AROUND MY HEAD, STOMACH AND BACK. WHILE THEY WERE DOING THIS ANOTHER GROUP ATTACKED OUR CAMERAMAN AND PULLED THE VIDEO TAPE CAMERA OFF HIS SHOULDER, TORE IT FROM THE RECORDER AND THREW IT ON THE GROUND. NEXT, THEY PICKED UP THE VIDEO CAMERA AND RAN AWAY WITH IT. THEY ALSO TRIED TO GET THE VIDEO RECORDER WITH THE TAPE CASSETTE IN IT BUT WE MANAGED TO PUT IT IN THE CAR AND LOCK IT UP. WHILE I WAS DOWN ON THE GROUND ONE OF THE UNION PICKETS REACHED IN MY COAT POCKET AND STOLE THE CAMERA THAT I HAD BEEN USING TO TAKE PICTURES.

THE PICKETERS THEN STOPPED BEATING ON US AND RETURNED TO THEIR PICKET LINE WHICH WAS APPROXIMATELY 20 YARDS AWAY FROM WHERE WE WERE ATTACKED. SEVERAL OF THE ATTACKERS JUMPED IN CARS AND SPED AWAY. WITHIN FIVE MINUTES ONE OF OUR COMPANY TRUCKS ARRIVED AND ATTEMPTED TO CROSS THE PICKET LINE. THE PICKETS THREW ROCKS AT THE TRUCK AND HIT IT WITH STICKS WHILE CUSSING AND THREATENING THE OCCUPANTS. I LEARNED LATER THAT THE SAME PICKETS HAD TRIED TO PHYSICALLY DRAG OUR PROJECT SUPERINTENDENT FROM HIS PICKUP TRUCK. THEY STOLE HIS BRIEF CASE, TOOLS, JACKET AND HARD HAT. FINALLY, THE STATE POLICE ARRIVED AT THE SCENE. WE HAD DIFFICULTY IN GETTING THEM TO COME. THEY DID HELP OUR MEN GAIN ACCESS TO THE CONSTRUCTION SITE. A SHORT TIME LATER WHILE PREPARING TO LEAVE AND RETURN HOME TO OUR

OFFICE WE SAW APPROXIMATELY 40 PICKETS SURROUND ONE OF OUR TRUCKS WHICH WAS PULLING A TRAILER LOADER WITH A BACKHOE AS IT TURNED OFF ROUTE 1 ONTO OLD STATION ROAD. THESE PICKETS USED KNIVES TO CUT THE HYDRAULIC BRAKE LINES ON THE TRAILER. THE PICKETS ALSO USED ICE PICKS OR "SHIVS" TO PUNCTURE SEVERAL TIRES. I HAVE SUBMITTED TO THE COMMITTEE SWORN STATEMENTS FROM MYSELF, KEVIN SNOKE AND PAUL SWEARINGEN WHICH I WOULD LIKE TO HAVE INCLUDED IN THE FORMAL RECORD OF THIS HEARING.

WHEN I RETURNED HOME I WENT TO THE DOCTOR'S OFFICE BECAUSE I THOUGHT I MIGHT HAVE A SLIGHT CONCUSSION. I ALSO HAD PAIN IN MY BACK AND ARM. THE EXAMINATION REVEALED THAT I DID NOT HAVE A CONCUSSION. THE DOCTOR ADVISED ME TO TAKE IT EASY AND IF ANY OTHER PROBLEMS DEVELOPED TO CONTACT HIM. MY HEAD CONTINUED TO HURT AND FINALLY, ON JULY 4, 1983, I WENT TO THE EMERGENCY ROOM AT LANCASTER GENERAL HOPSITAL AND MET WITH DRS. ESBENSHADE AND HOKE. I WAS IMMEDIATELY DIAGNOSED HAVING A SUBNEURAL HEMATOMA AND WAS OPERATED ON IN THREE DAYS. WHILE RECOVERING IN THE HOSPITAL FROM THE FIRST OPERATION I SUFFERED A SEIZURE AND/OR FAINTING SPELL AND FELL WHICH CAUSED A VERY SERIOUS BRAIN HEMORRHAGE.

AFTER OVER THREE WEEKS IN THE HOSPITAL, MOST OF IT IN INTENSIVE CARE, I WAS RELEASED. I SPENT ANOTHER FOUR WEEKS RECUPERATING AT HOME. NOW, I AM BACK AT WORK BUT I AM NOT YET "BACK TO NORMAL". THERE ARE MANY THINGS WHICH I STILL CANNOT DO. MY BUSINESS AND PERSONAL LIFE HAVE BEEN IMPAIRED.

PRIOR TO JUNE 8, 1983, I HAD NEVER BEFORE BEEN PHYSICALLY ASSAULTED. IT IS A SICKENING EXPERIENCE. MY MEDICAL BILLS, LOST WAGES AND OTHER EXPENSES ASSOCIATED WITH THE ATTACK WHICH WERE IN EXCESS OF $50,000 DO NOT BEGIN TO EVEN APPROXIMATE THE TRUE DAMAGE TO MY PERSON, MY FAMILY AND MY BUSINESS.

I WOULD NOT PRETEND TO KNOW MORE ABOUT ORGANIZED LABOR AND THIS COUNTRY'S LABOR LAWS THAN WHAT THIS DISTINGUISHED COMMITTEE KNOWS. BUT I DO KNOW THAT I HAVE NEVER SEEN OR EXPERIENCED SUCH A TOTAL AND BLATANT DISREGARD FOR THE LAW AND FOR THE MOST BASIC OF ALL HUMAN RIGHTS. NO UNION, NO INDIVIDUAL, NO MATTER HOW POLITICALLY STRONG THEY MAY BE, SHOULD HAVE THE POWER TO BE ABOVE THE LAW. NO ONE SHOULD BE ALLOWED TO HURT ANOTHER HUMAN BEING OR TO DISRUPT OR ATTEMPT TO DESTROY ANOTHER PERSON'S BUSINESS. IF I COMMITTED A CRIME I WOULD EXPECT TO BE PUNISHED. FURTHERMORE, I WOULD IN

FACT BE PUNISHED. WHY SHOULD A LABOR ORGANIZATION, ITS LEADERSHIP AND ITS MEMBERS BE ANY DIFFERENT.

WE HAVE HAD PICKETING ON SEVERAL OF OUR PROJECTS. EVERYTIME WE CALL THE POLICE WE ARE TOLD "THERE IS NOTHING WE CAN DO" OR "WE CAN'T DO ANYTHING UNTIL THE COURT ISSUES AN INJUNCTION". MEANWHILE, VIOLENCE, VANDALISM, EXTORTION AND SHEAR TERRORISM ARE ALLOWED TO CONTINUE. IF FEDERAL LAW CREATED THE VARIOUS RIGHTS FOR THE UNIONS THEN THE SAME BODY OF LAW SHOULD ALSO REGULATE LABOR'S BEHAVIOR AND PUNISH ITS MISCONDUCT. AS A CITIZEN AND AND AS A BUSINESSMAN I SHOULD BE FREE FROM THE TYPE OF PROBLEM THAT OCCURRED ON JUNE 8, 1983. IT IS OBVIOUS THAT SOMETHING NEEDS TO BE DONE TO FURTHER PROTECT OUR RIGHTS.

THANK YOU.

Senator **Grassley**. Thank you, Mr. Wohlsen.

I now turn to Cher Mungovan. She was born in England. When violence was directed at her, her husband, and their company, it destroyed their livelihood, and when she found out that the State government would not do anything about it, and that the Federal Government could not do anything about it, she sought to change the law and has been on a crusade to accomplish that goal since then.

As all of us here know, there are many obstacles to changing law, but she has persevered and is here to help us in the effort to get this legislation passed.

We ought to listen to the video tape first, I feel, before we go to you. So at this point, we will turn on the video tape.

[Video tape shown.]

Would you proceed, Cher.

STATEMENTS OF CHER MUNGOVAN, HAWAII; JOHN FORD, OREGON; AND, JOHN PICKELL, VICE PRESIDENT, BRINDERSON CORP., CALIFORNIA

Ms. **Mungovan**. It is kind of upsetting to see that, even though I am living it, you know. It always makes a difference when you see it in writing or see it on television.

In November 1982, we, after 2 years, were able to get indictments against the AFL-CIO Carpenter's Union in Honolulu for perjury.

Senator **Grassley**. Can you speak louder.

Ms. **Mungovan**. We were able to get indictments against the two business agents from the AFL-CIO Carpenter's Union for perjury.

We had tried to get something done about the violence and the threats to our men and our family on our jobsite for 2 years, but we could not get any local or State agencies to help us. We finally went to the Organized Crime Strike Force, and they sent us to the FBI.

After a year they obtained indictments. Since January this year I have seen my husband maybe a total of a week. In January the FBI had him on the mainland under their jurisdiction for his own protection. They brought him back to Hawaii in March this year for the trial of one of the people that was indicted.

This person was found guilty and sentenced to 6 months in prison for one count of perjury.

My husband came home for about 2 or 3 days, and we received phone calls from various members in the business community that there was a contract out on his life because he had testified against this person and because they had received a conviction against him. So the Government removed him and brought him back to the mainland again. They returned him to Hawaii in May 1983 for a trial with 2—of 2 business agents on a total of, I think, 10 or 11 counts of perjury.

During this trial two men came to our hotel room and tried to take my husband downtown. And they were posing as FBI agents. This incident is still under investigation right now.

The next thing we knew was we were sitting in Federal court waiting to go back up on the stand and I left the room for a few minutes and when I came back my husband was gone. I saw him for approximately 5 minutes after that in the U.S. marshal's office, and I have not seen him since. I do not know where he is. I do not know who he is. The Government has, under the Federal Witness Security Program, has given him a new identity. He is living someplace on the mainland. I have spoken to him periodically on the phone. I have only communication through the mail system, through a post office box I have to send mail to. It takes about a month for him to receive any mail from me.

He has no communication with anybody except me. Because of what the union did to us, we have lost our business, which in 1980 when this started, we had a gross income, I think, of approximately $2 million or at least 2 million dollars' worth of work going at the time.

Within 6 months, we had no jobs. We have not been able to get any jobs since then. My husband had bid on jobs and was told that he could not be given the jobs for political reasons or because people were scared to hire him. He was also told that when he bid on jobs for the State of Hawaii and he also bid on county jobs using Federal funds.

He came in low bidder, and was not given the jobs because they were scared of having union problems, picketing, threats made against them. We have found this year that there was evidence to bid rigging going on, which explained why he was not getting the contracts for these jobs when he had done previously.

We have gone from having an extremely successful business to losing our entire business. Our family life has been completely destroyed. I have a 12-year-old son at home. And he has been going to a psychiatrist for the last 9 months because this whole thing has just been too much for him.

After I came home from the trial in Honolulu in May, I had to explain to him why his father was not coming home and why we did not know where he was, why the Government had changed his name. He does not understand this. He is only 12 years old. He has since—he is an A student in school, and he has since failed all his classes. The teachers in school tell me that he does not concentrate in school. He is there physically, but otherwise they cannot get through to him.

This has also upset my parents who retired here from England in 1979 after working 41 years there. My father worked for British Leyland, which is probably the largest, one of the largest companies in England. And they were constantly plagued by union strikes over there. He was in management, but not once in 41 years did he ever have any problem of getting to his job, did he ever see any problems in that country caused by unions or any threats or violence or extortion by union members.

In fact, I remember driving my father to work, and there were thousands of picketers outside the gates to his—to the entrance to his office, and when we would drive up, the picketers would just move aside.

My mother was a secretary to the second largest teacher's union in England for many, many years. Not once in any of their strikes have they ever encountered any of the kind of violence which happens in this country.

They came to retire in 1979, and lived on Maui for approximately 1 year before we had problems with the union. Their peaceful retirement ended right then, and unfortunately now my mother has to go out and work to put food on the table. My father is unable to work. He has gone from a happy, carefree man to a tired old cynic that does not have any life in him anymore.

They moved to this country because I asked them to. You know, I got my citizenship here, and I was really proud of this country and what it stood for. And I really believed, as they did when they moved here, that this was the epitome of the land of freedom and opportunity.

I am extremely upset, and I am ashamed at this point to have brought my parents to this country. They, through all of our problems, because we had business costs that we had to pay for—we had to keep an office running; we were trying to pay for our equipment that we had, and my husband was out every day trying to get work, since the union problems in 1980 and 1981—and we had no income.

So my parents, in order to keep us going, because we did not understand at the time that bid rigging was going on and we did not understand why we were not getting jobs, they lent us money to pay our bills, to pay our mortgage, to pay our office bills, to keep us going until we could get some work.

Since my husband has been gone in December, my mother has paid the mortgage payment on my house. They are destitute now, as I am. They have no money. As I said, my mother works to put food on the table. I have no income. It has even got to the point where I have had to sell my wedding ring to buy food. In 12 days I am losing my house because I cannot pay the mortgage payment.

We have tried to go through our police department to get something done about this and to get something done about what has happened to us and to get charges filed against the members of the union that were responsible for the threats upon us and the threats upon our employees and their families and my family and my husband. And they will not file charges.

We called the police to our jobsites at least every other day for 3½ months; they either did not come or they showed up an hour late. They told us that they did not want to file charges because the picketers were either friends of theirs or relatives of theirs or because they were in a union, the police officers, and they did not want trouble with another union.

We tried to file terroristic threatening charges because our lives were threatened and our employees lives were threatened. We thought that at least the charges had been filed. When we finally went to the FBI, they asked us to go and get copies of all the police reports for the 3½ months that we had had picketing 6 days a week.

I went down to the police chief, and I expected it to take them a few days just to get us all the reports together. He called me back in 20 minutes and gave me three reports for 3½ months, and these were filed under harassment.

One of these incidents was a charge that one of our employees filed against a picketer, a business agent from the union, who has since been tried and found guilty on four or five counts of perjury. And that charge was not filed under terroristic threatening. This particular employee has flown back from the mainland twice so far to try and get the prosecutor and the police department to change the charge to terroristic threatening, and they will not do it. We are lucky that anything was filed at all.

But they consider that to be a misdemeanor harassment charge, and they will not prosecute. I do not consider it to be a harassment charge when somebody threatens your life, when a picketer is carrying a gun on a picket line.

I do not consider that it is a misdemeanor when somebody calls up my house and threatens to blow it up. I do not think it is a misdemeanor when somebody calls up and threatens to kill my husband. And I do not think it is a misdemeanor when they call up and threaten my family.

Earlier this year the business agent that was convicted filed a terroristic threatening charge against my husband with the police department. Within 2 days the county prosecutor wanted to prosecute, and yet we cannot get any of our charges processed by them at all.

The charge that the business agent filed against my husband was completely unfounded. They charged him with threatening them with a .357 Magnum, which at that time he did not have a permit for. Had the police department informed the prosecutor or wanted to inform the prosecutor that he was not in possession of a permit to carry a .357 at the time, I would imagine that this charge would have been dropped. Right now it is pending because they do not know where my husband is.

He demanded at the time to take a polygraph exam, and he said that from the results of that, that they could drop the charges, that they could file malicious prosecution charges against the business agent who had charged him. But they told us that the machine was broken. He kept demanding through the FBI and through the police department to take the polygraph up until—on and off when he was on the island until the trial this year.

The day that the article came out in the paper in Honolulu about my husband being on the witness program, the police department called me up and said that they were ready for him to come in and take the polygraph exam. Of course, he is not here.

I cannot justify why in this country this kind of thing goes on. I cannot justify what it has done to my family. I cannot justify what it has done to my husband. He has never had a parking ticket in his life. He fought in Vietnam. He volunteered to go to Vietnam and he came home a hero. And he went to war.

Right now, he is fighting a war in his own country; he is trying to stay alive and fearing for his life in his own country and only because he went to court and testified in a perjury trial.

We were told by the U.S. attorney's office that they could not prosecute the union or their agents for anything other than perjury, not for their violence on the picket lines, not for their threats of violence or threats that we received at our home or the extortion attempts or anything else because of a loophole in the Hobbs Act.

It was not until June 1981 that we were aware that the Hobbs Act existed. And we were horrified. My husband had tape recorded the conversations that he had had with the business agents from the carpenter's union because they had picketed us constantly for 6 days a week, 3½ months, to try and get us to sign a contract.

At the time that they asked us to sign a contract, they said that they were going to picket us because they were charging us with paying substandard wages and having substandard working conditions. At the time the union scale was $11.05. And my husband was paying his carpenters $15 per hour. And this is plus benefits. The union was well aware that we were not paying substandard wages. In fact, we have a tape with one of the agents on it indicating that. And he also indicated that the only reason they were picketing us was to get us to sign a contract.

If they could get my husband to sign, they felt that everybody else would sign, and it was their intention to get all the carpentry work done in the State of Hawaii, to get it done through their carpenter's union. My husband had been a member of this particular union for many years. I really cannot justify this when an entire country, England, has more often than not been brought to its knees, and it has been brought to its knees by the union, but never has there been any case of violence or extortion or death attributable to any members of the union.

I do not understand why in this country the unions feel that they need an exemption in the law and they fight for it every time this type of bill comes up in Congress. I do not understand why they need or why they feel they need this exemption in the law which allows them to use violence on people and to use extortion if they so often profess that they do not use it.

If they do not use it, why do they care whether there is a law against it or not?

I also have, since we have brought the tapes that we have to the Government, Walter Kupau, who you just saw on the video tape, the head of the carpenters' union in Hawaii—he is also the head of the AFL–CIO in the State of Hawaii and the Business Trades Council—filed a $6 million lawsuit against us for wiretapping. My husband had only recorded conversations on a microcassette recorder.

A business agent that we took to court for perjury filed a $2 million lawsuit against us for allegedly running him over at 20 miles an hour in a pickup truck. His wife is suing us for loss of love and affection.

Three weeks ago I had another lawsuit filed against us by the carpenter's union, charging that Walter and I personally harassed their 6,000 member union. I did not ask how much this lawsuit is for because after $6 million I stopped counting.

I have right now over 50,000 dollars' worth of legal bills from my attorneys. I am not on the program with my husband because we discussed the fact that we had brought a lawsuit at the beginning of the year against the union for violations of antitrust, various racketeering bills, and labor violations, and my attorneys told me that if I went on the program, I would not be able to continue with the lawsuits.

Senator **Grassley**. I am going to have to interrupt you because we just have the last set of bells on a 15-minute rollcall. So I am going to have to go over and vote, and I will recess the hearing for approximately 9 to 10 minutes.

Ms. **Mungovan**. All right, Senator.

[Brief recess.]

Senator **Grassley**. The meeting will come back to order. And, Cher, I would ask you to complete your statement.

Ms. **Mungovan**. Thank you, Senator.

I know we are running short on time and my statement is going to be submitted for the record, so I will make it pretty short.

[Material referred to follows:]

STATEMENT

BY CHER MUNGOVAN

My name is Cher Mungovan. I live at 545 Kupulau Drive, Kihei, Maui, Hawaii.

My husband, Walter Mungovan, is an innocent victim now living as a number on the U.S. Government's Federal Witness Security Program.

An FBI agent in Honolulu said to me, "Cher, you have to think of it as though Walter has gone to war."

Well, my husband did go to war in 1965. He volunteered for his country, fought in combat for a year in Vietnam and Cambodia with the First Air Cavalry, and came home to Massachusetts a disabled veteran, a sargeant, with seven or eight medals.

He got a job as a union carpenter in Boston and then traveled throughout the United States to find a place where he could work at his trade twelve months out of the year, and eventually retire. He found that place on Maui, Hawaii. A peaceful island in the Pacific, where the temperature rarely varies more than ten degrees, and where one of three main industries is construction.

He transfered his carpenters book to Local 745 of the AFL-CIO Carpenters and Joiners of America in Hawaii and worked until 1979 as a member of that union. He was a foreman, a shop steward, and had been elected by the members to represent them on the committee for contract negotiations. He had always had a good relationship with the Carpenters Union, was very knowledgeable of his trade, well respected by his employers and co-workers alike, and he loved his work.

But he wanted to better himself. He took the contractor's licensing examination in the State of Hawaii and decided to go into business for himself. He thought that by specializing in custom homes he could not be accused of taking any work away from the union, as they did not enter that field of construction. He wanted to be a success.

In October, 1979, he started building for the public. A year later he had established a very successful business and reputation, and he had gone out of his way to hire the best tradesmen possible.

Two of his former superintendents with the carpenters union came to work for us, as did other union carpenters, masons and laborers. He paid them well, and he treated them well ... our crew of approximately twenty employees were part of our family.

We were receiving a hundred or so phone calls a week from people who wanted to come and work for us. The union pay scale at the time was $11.05 per hour plus benefits. We paid our carpenters $15 per hour plus benefits, and we had a good working environment and conditions.

In September 1980 the Carpenters Union shut down the construction industry in the State of Hawaii while they went on strike because they could not reach a contract settlement with union employers. We continued to work non-union.

After six weeks of a strike, the contractors finally signed an agreement for 46.4 percent increase, a 61 percent increase in wages alone, and the construction industry went back to work. Many union contractors went out of business shortly thereafter, or closed their companies down, feeling they could not afford to stay in business paying the negotiated higher wages, and costly work rules, on top of already the highest workman's compensation rates in the country ... after all, consumers can, and will, only pay so much to construct a building.

Mr. Kupau, Financial Secretary of Local 745, President of the state AFL-CIO and the Business Trades Council, was proud of himself. He had achieved an incredible contract for his approximately 8000 member union, but he wanted more. He wanted all carpentry work in the State of Hawaii done by Local 745, regardless of the circumstances.

Walter was a perfect target. He had been a faithful union member prior to getting his contractors license. He was very successful in the custom home market. Walter was a strapping 6'7" man. If Mr. Kupau could force Walter to sign a union contract, the other non-union contractors would fall in right behind him.

In December 1980 Mr. Kupau sent a letter to us demanding our payroll and employee records. We ignored it. A business agent from Local 745 called and wanted to meet with Walter. The meeting took place and the agent told Walter that the union wanted him to sign a contract.

Walter explained that he was not in a position to do so. He was only building custom homes, did not have the bonding capacity to do commercial work or compete in the bidding process with large union contractors. He told the agent that when his company was bigger, had a larger bonding capacity, bid on commercial jobs, then he would be willing to negotiate a contract. The agent said that wasn't good enough, and Walter must sign right away.

Walter asked why the union targeted him and not other non-union firms doing commercial jobs, and cited one particular contractor. The agent told him that they were going to get the other contractor to "sign up no matter what, even if we have to torch his jobs."

Walter and I discussed these events and decided not to sign. We were worried about the threat of arson to our homes being built, so Walter carried a micro cassette recorder to record future conversations so that we might have some proof in case one of our jobs mysteriously went up in flames.

Under Federal law, taping a conversation is legal as long as one of the parties in the conversation agrees to it.

We received another letter from Mr. Kupau threatening us with picketing if we did not produce employee and payroll informaton. We did not want the union harrassing our employees at home because we had provided the union with our records which indicated their names, addresses and phone numbers. We considered that information none of their business.

January 6, 1981 picketing started at three of our homes in exclusive residential areas. Walter sent the employees home for three or four days because we wanted to find out our legal rights. When they returned they were instructed never to speak to the picketers. That way they could not be accused of any wrongdoing by the union or the Naional Labor Relations Board.

Dennis McCarthy, head of the NLRB in Honolulu, told us the union had a right to picket us indefinitely for "informational purposes" to inform the public that we were "paying substandard wages and/or working conditions," but they could picket for recognition by our employees for only thirty days.

Walter demanded an election to be held by the NLRB amongst our employees; they could decide for themselves if they wanted union representation.

The election was unanimous to stay non-union. But the picketing continued. The union said they didn't care about federal elections or the results, they wanted us to sign a contract.

We filed a complaint of illegal picketing with the NLRB and went to federal court to get an injunction to keep the union off our jobs. The judge dismissed the case because he didn't know why we were there.

The NLRB hadn't filed any affadavits Walter had submitted charging the union with illegal picketing, and yet they had filed all affadavits from various representatives of the union in rebuttal to our charges.

A new NLRB attorney was assigned to us who had recently come to Honolulu from the east coast. He told Walter and me not to give any information to Mr. McCarthy, his boss, because McCarthy was calling the union and telling them what we were doing before the paperwork went to the Regional Director in San Francisco to be acted on. This attorney also told us that Mr. McCarthy had had his life threatened by Mr. Kupau on a previous occasion concerning a case that went to the NLRB.

We went to federal court again one month later, after having to hire labor attorneys to make sure the NLRB was submitting all the paperwork they were suppossed to on our behalf. We additionally charged the union with secondary boycotting.

The judge ruled that we had brought Mr. Kupau and his union back into court on the same charges twice, ignored the additional secondary boycott charges, and dismissed the case.

We went back again to the NLRB, asked them to refile charges against Local 745, and get us our injunction. This time we knew we would get it.

We produced for the NLRB the microcassette tapes from recorded conversations with union officials, and the employee of a concrete company. Until this time only Walter and I knew of the existance of the tapes.

The tapes proved beyond a reasonable doubt that the union had never intended to picket for "informational purposes" to protest substandard wages. The tapes proved that they were not interested in representing our employees. Their one and only goal was to get Walter to sign a contract and hire new employees through their union hall. The NLRB got another court date a month later.

On approximately April 16th, 1981 transcripts of our tapes were delivered to the union's attorney. A few hours later Mr. Kupau went into the NLRB office and signed a settlement agreement with Dennis McCarthy. He agreed not to picket us for thirty days ... retroactive.

When our NLRB attorney returned to his office, he was furious that McCarthy had signed the agreement. Had he been there when Kupau came in, he said, he would not have settled the case. Mr. McCarthy informed me some days later that the court date was cancelled and the case had been settled.

We told McCarthy we didn't want the case settled. We wanted to go to court with our indesputable evidence and get an injunction. He said we had no choice, that because we had gone through the NLRB to file charges against the union, which one has to do, that they had the option of going to court or settling the matter. It was cheaper, he said, to settle it.

We had done everything according to the law, told the truth and ended up with nothing. The union was laughing about it.

Mr. Kupau filed a $6 million lawsuit against us for "wiretapping" immediately after he had signed the settlement agreement. This case was dismissed in state court, but has since been appealed by Mr. Kupau and the union.

A business agent filed a $2 million lawsuit against us, and my brother, for allegedly running him over at 20 miles per hour in a pick-up truck. His wife is sueing us for "loss of love and affection."

Four and a half months had passed.

We had lost one of our contracts part way through because the owner was afraid the union would burn their house down, and they were tired of pickets outside six days per week, so they asked us to release them from the contract.

We had been unable to get materials and supplies delivered to our jobs.

Sub-contractors wouldn't work on our projects.

Tools and materials had been stolen from the jobsites.

We had to hire security guards to patrol our jobs during hours we weren't present.

Union picketers threatened the lives of our employees and my family.

They threatened employees of our delivery companies.

They harrassed the families of our employees.

We received a bomb threat at our house.

We received death threats, in note form and on the telephone.

All our jobs had taken much longer to complete than normal, costing us thousands of dollars.

In May, 1981, we took the tapes to the Organized Crime Strike Force who sent us to the FBI.

After investigating the case, the U.S. Attorneys office held grand jury hearings in July and August of 1982. They handed down twelve perjury indictments against Torres and Nishibayashi, two union business agents, and Yoshida, a dispatcher at the concrete company.

Because of a loophole in the Hobbs Act, we were told, they could not be charged with other crimes.

In March, 1983, Yoshida was found guilty in federal court and sentenced to six months in prison. In sentencing, Chief Judge Samuel King said,

> "the problem with this is not only that there was perjury, but the underlying activity that the labor department was involved in was one to try and preserve the integrity of the business operations on Maui, and the allegations behind the perjury charge in this case is that Torres, ... was essentially running a gangster type operation to get what he wants out of terrorizing employers ... a completely legitimate (business) operation on Maui was attempted to be put out of business by the kind of operation Mr. Torres was involved in."

In May, 1983, Torres and Nishibayashi were convicted and also sentenced to six months in prison. The U.S. Attorney, Daniel Bent, in his sentencing memorandum said,"

> "(They) were the driving force behind the destruction of a man, a family, a business, and an ideal. They transformed Walter Mungovan, a combat veteran, a carpenter and a successful contractor, into a man whose business and family life were virtually destroyed, and into a man who feared for the safety of himself, his family and his business. They bullied him, they threatened him, they shut him down and they willfully and maliciously perjured themselves."

Since June, 1981, except for small jobs given to us by friends, we have had virtually no work. Walter bid on jobs for one and a half years and couldn't understand why he didn't come in low bidder as he had done previously. Earlier this year, we finally understood why when we were presented evidence and witnesses to bid-rigging.

Architects told us they couldn't give us jobs for "political reasons."

We bid on a county project being built with federal funds. Job specifications said the low-bidder would be awarded the job. It was a sealed bid opening and we were low-bidder, but the county corporation counsel used all its resources to find or create a loophole in the specifications so as not to award the project to us. The next highest bidder was awarded the job.

People said they were afraid to hire us for fear of trouble, threats or picketing by the unions. Jobs that had been promised to us were cancelled.

My brother had worked for us in 1980 doing grading work and had generated $30,000 worth of outside contracts during that year. After the picketing started, no one would hire him. In 1981 he received a total of $2,000 worth of outside contracts.

In January, 1982, he took the equipment and started his own business.

It took him a year to get enough work to survive. He practically had to deny that he was related to us, otherwise no one would hire him.

We had approximately twenty employees in December, 1980. By June, 1981 we had put eighteen of them on the unemployment lines because we had no work. Quite a few of the employees found it difficult to get work from anyone after they stopped working for us.

We were receiving threatening phone calls even after the picketing stopped.

We woke up one morning and found our vehicles had been maliciously damaged in our driveway while we were asleep. The damage amounted to approximately $3,000; plus the cars had "SCAB" painted all over them.

We installed surveillance equipment around the property.

After the indictments the threats and phone calls became worse.

The FBI instructed the local police chief to issue Walter a permit to carry a gun to protect himself. We do not have an FBI office on Maui and we could not rely on the police department for protection.

For most of January and February 1983 Walter was somewhere on the mainland under FBI protection. He was brought back to Honolulu to testify in the March trial.

He returned to Maui afterwards, but we began receiving phone calls from people in the business community saying they had heard there was a contract on Walter's life after he had testified in the trial of Yoshida, and Yoshida had been found guilty.

The FBI kept him on the mainland until May, 1983 when the second trial took place.

During the trial we were put in a hotel room under assumed names.

Two men came to our room one day professing to be FBI agents and saying they had to take Walter downtown. This incident is still under investigation by the FBI, but we were moved and put under twenty-four hour guard.

We sat in the witness room in federal court waiting to go back on the stand, and I left for a few minutes to go to the bathroom. When I returned, Walter was gone.

The FBI said the U.S. Marshals had him under their jurisdiction. I saw my husband for five or ten minutes after that ... in the Marshal's office. I haven't seen him since.

That was on May 18, 1983.

After the indictments in November 1982, I watched my husband go from a fearless man to a man afraid for his life and his family.

He left the house every day to try and find work, carrying a .357 Magnum. He came home scared. He wouldn't leave the house at night. He didn't sleep well. He said to me,

> "I didn't fight in combat in Vietnam to come home and be killed in a Maui cane field and not know who did it ... in Vietnam I knew who the enemy was, here I can't tell the difference."

During the trial in May, 1983 he had terrible nightmares, for the first time in seventeen years, about incidents that happened in Cambodia. I was scared. He had changed from the strong, happy man I had married to a man deeply affected by unending emotional and physical stress. I sat at night and watched him try to sleep, tossing and turning, and I wondered ... WHY?

Why had all this happened to us?

Why, when all Walter had ever done was tell the truth, had all of this turned against us?

Why did we end up as victims?

Walter's father had always instilled in him a belief in the American Constitution and the Bill of Rights, and a great sense of decency, honesty and hard work.

It was because of this that he volunteered to go to Vietnam, and he was proud of it. It was for the same reasons that he became the government's witness in their perjury cases.

For too many years, in Hawaii, Walter had seen the same thing that happened to us happen to other contractors. We have friends who have moved to the mainland, because they had been forced out of business in Hawaii by the same tactics that had been used against us. We have asked, but these people are afraid to come forward even today and testify.

We have friends on Maui and Oahu that would have testified to violence, arson and extortion threats made by unions against their companies, IF there had been a law that allowed federal prosecution, and substantial sentencing.

Our case is not an isolated incident by any means ... it is a way of life for most unions in Hawaii and all over this country. The only difference in our situation was the fact that we had tape recordings. But even this was not enough. We didn't have the law on our side ... except for perjury.

Senator Inouye from Hawaii wrote to me and said,

> "As is demonstrated by your case, Federal law providing for the policing of (union) activities is already very substantial."

Well, I'm sorry Senators ... it is not enough.

It is not enough when my innocent husband is forced to leave his family, friends, and his home to live a life of lonely existence because of a reported contract on his life over a perjury trial.

It is not enough when I have to explain to my son that his father is gone from his life, that I don't know where he is or who he is.

It is not enough when it has caused the destruction of our business and our happy family life.

It is not enough when certain people in our society are exempt from the laws that govern everyone else.

It is not enough, Senators, when I can't justify it. And I have tried.

I can't justify it when we called the police department to our job sites nearly every other day for four and one half months and they sometimes didn't show up for an hour, if at all.

I can't justify it when police officers told the picketers not to talk to Walter because he was carrying a tape recorder.

I can't justify it when our employees had their lives threatened on job sites and the police didn't file reports. (They said it was because they were in a union and didn't want trouble with another union, or because the picketers were friends or relatives of theirs.)

I can't justify it when a former employee has returned from the mainland twice to try and get charges changed against one of the convicted business agents. (The death threats against him were filed by an officer under "harrassment" and the prosecutor won't prosecute.)

I can't justify it when police officers were told by their chief to patrol our home and they came to me and said, "This is f—— b——."

I can't justify it when it caused us to put eighteen people on the unemployment lines when they should have been employed.

I can't justify it when a convicted business agent filed a terroristic threatening charge against my husband and the county prosecutor wanted to immediately prosecute, yet they won't prosecute our charges.

I can't justify it every time I take my son, who is an A student, to the psychiatrist because he is now failing all his classes in school due to this turmoil.

I can't justify it when I have to go to a pain clinic in California for intense headaches that have plagued me twenty-four hours a day for the past three years.

I can't justify it when I am told that my hair is falling out and going gray solely due to stress.

I can't justify it when my parents, who retired to Hawaii in 1979 after working forty-one years in England, have lent us all their savings over the past two and a half years to survive and are now penniless.

I can't justify it when an entire country, England, where I am from, has more often than not, been brought to its knees by the unions. But NEVER, NEVER have there been any cases of violence, arson, extortion or death attributable to any members of a union.

We must ask ourselves ... WHY?

It is because union members in England believe in the goals and ideals of their unions, and their unanimity gives them the strength needed to achieve their goals without resorting to violence and extortion. It is also against the law in England for ANYONE to engage in these types of activities.

Senators, England has many faults, but they are a nation with a larger percentage of unions and members, per capita, than our country. Maybe there is a lesson to be learned from that.

I came to this country because I thought the United States was the greatest country in the world .. the land of opportunity and freedom. I got my citizenship here, and I was proud.

I was so proud of this country that I asked my parents to retire here. They had a beautiful home in England and well paying jobs. They sold everything they had and looked forward to a peaceful retirement.

That lasted one year. Since then they have lived through all the hell we have ... and it shows.

My father has gone from a happy, carefree man to being a tired old cynic who has no life in him anymore. My mother now works to put food on the table.

I am guilty and ashamed. I was so proud to be able to bring my parents to the United States, and now they are as disillusioned as I am with all the ideals they thought this country stood for. Most of all is the total lack of adequate laws to protect one's basic rights to be able to make a decent living for oneself and family without being forced, coerced or threatened by labor unions.

And my son. My sweet, innocent son.

How do I explain to him that the "right" thing to do is always tell the truth when he sees what the truth has done to his father and our family?

How do I explain to him that one should not use extortion or violence against another person because it is against the law, when he sees it happen to his father and nothing is done?

How do I explain to him that the police are our protectors, that he can always go to them for help, when he sees his father ask them for help and no one comes?

How do I explain that it is against the law to threaten another persons life when he has seen it happen to his father and our employees and nothing is done?

How do I explain to him that his father is no longer Walter Mungovan but a number on the Federal Witness Security Program? That we don't know where he is, or who he is? That I don't know when we will ever see him again? That he is living a life of bare existence?

And how do I explain that the three men who were found guilty are out on appeal, walking free for at least another year and a half, still working for the unions and still threatening other people, when his father is the one suffering most from all of this?

Senators, I don't know how to explain all of this because all my son says to me is, "But Mom, Dad didn't do anything wrong."

The U.S. Marshals patched me in by telephone to my husband after he was transported to the mainland. Through a lengthy discussion it was decided that I should stay off the witness program because earlier this year we hired attorneys to file precedent lawsuits in federal and state courts against the union and its agents, charging them with violations of antitrust, various racketeering and labor laws.

These lawsuits cannot be continued if both of us are on the witness program, and the lawsuits are the only chance we have left to recoup any of our losses caused by the union.

I borrowed money to come to Washington, D.C. in July this year with the hope of being able to raise money for a Legal Defense Fund that was set up because I have no income to pay more than $50,000 in legal fees. These have also been incurred defending ourselves in the unions unfounded suits against us. Mr. Kupau said in 1981 he would tie us up in the courts until we ran out of money, which is true ... and an easy statement to make when one is using union monies to do so.

But THE MOST IMPORTANT THING to me was to bring my husband's case to the attention of the 98th United States Congress, and S. 462 to the attention of the American public.

I have been alone here since July trying to get a hearing before this

Committee, not because your decision on passing this amendment onto the Senate floor will change anything that has happened to my family, but so that what has happened to my family does not happen to one more family in the United States.

Somewhere, and somehow, this kind of activity has to stop.

Unfortunately, we cannot rely on local agencies and laws to deal with illegal activity involving unions. There is too much pressure put on them from the local political level. Charles Marsland, Prosecuting Attorney for the City and County of Honolulu said recently,

> "Organized crime in our state is expanding and thriving on extortion, labor racketeering, gambling, drugs, prostitution, pornography, fencing, murder-for-hire, protection, collection and whatever else will turn a quick dollar. The Hawaii Crime Commission went to the Legislature in 1978 and asked for immunity ... the Commission was then publishing a report on Organized Crime in Hawaii and wanted to name names without fear of libel suits. The Commission report began with the statement: In Hawaii ... organized crime has become an important force in the life of the people. The Commission was willing to be explicit about the leader of organized crime and those people in government and elsewhere who compromise the 'linkage' between crime and legitimate society ... which, the Commission wrote, 'is the key to the ability of organized crime to survive in Hawaii. The Legislature not only refused to grant immunity, but immediately stripped the Commission of its investigative power. This past session the Legislature terminated Commission funding."

There are many other states that have similar problems which make it impossible in most cases to get effective results from local prosecution.

Many Members of Congress believe that S. 462 should it be enacted, will create an abundance of work for the U.S. Attorney's offices around the country.

I contend that it is not a natural reaction to "run" to the Federal Government and the U.S. Attorney's office. The first place one turns to is the police department, and then to the county prosecutor, state prosecutor or State Attorney General.

I think that if state or local authorities are then unwilling or unable to adequately deal with the situation, then one would at least have the option of pursuing any problem through the U.S. Attorney's office. Whereas today employers in this country have no one else to turn to after they have exhausted the state agencies.

As far as this issue and S. 462, both my husband and I feel that it is a "violence issue" and nothing else. If Members of Congress were exempt under the law in the same way unions are now, I would still be sitting here asking for an amendment to change the law.

We only ask for equal rights under the law, that unions and their members or persons they might hire, be liable for their actions. Every person residing in the United States should be treated equally under the law, without regard for race, creed, color or whether or not they hold a union card.

We don't think this is too much to ask considering what we have gone through, and are still going through today ... three years later.

The cases and incidents brought in evidence at other hearings on this type of legislation are only those that have been publicized in newspapers throughout the country. They are only representative of the thousands and thousands of incidents that should be reported and should be publicized.

But people are scared to file charges as I have seen in my own state. Quite often nothing is mentioned in newspapers.

The statistics on this type of violence and extortion can only be compared to those of rape ... there are a lot more rapes that are not reported, than those reported. People are scared.

Mr. Kupau and another business agent were indicted last month by a federal grand jury on fourteen counts of perjury, all related to our case. The trial starts November 2, 1983 ... I must be back in Hawaii by the end of this week.

Mr. Kupau filed another lawsuit against us three weeks ago charging that Walter and I harrassed and intimidated his 8000 member union. I didn't ask how much he is suing us for, after the first $6 million we stopped counting.

Twelve days from now I am losing my house to foreclosure because I cannot pay the mortgage ... my parents, my son and I will have nowhere to live, and we are destitute.

An FBI agent in Honolulu said to me, "Cher, you have to think of it as though Walter has gone to war."

But Senators, we are not at war, and my husband is not back in Vietnam fearing for his life. He is hiding in his own country ... fearing for his life.

I don't understand how, in effect, any Member of Congress can condone the kind of activity that has destroyed my family and taken my husband away from me, by allowing this loophole in the Hobbs Act, and by being reluctant to vote for this amendment of Senator Grassley's.

I can't compete with the lobbying done by anyone here on Capitol Hill in opposition to this bill, but I want to believe that somewhere what is 'right' will prevail over the politics of an issue.

I want to believe that my husband's sacrifice and my family's suffering has not been in vain.

Human life and freedom has to be worth more than the politics of an issue, isn't it?

If it isn't, then I will take down the American flag that has hung at half-mast above my house since May 18th, 1983, waiting for the day when Walter Mungovan is a free man again, and his name may as well be added to the 58,000 heroes on our black granite wall in Washington, D.C., who never got to come home and be free because of 'the politics of an issue.'

Thank you.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU
1164 BISHOP STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 523-4511

CHARLES F. MARSLAND, JR.
PROSECUTING ATTORNEY

October 17, 1983

Members of Senate Judiciary Committee
Hearing on Bill S.462 - Sponsored by Sen. Charles Grassley
October 25, 1983

Dear Senators:

By way of introduction, I am the elected Prosecuting Attorney for the City and County of Honolulu in Hawaii.

I have put my thoughts on paper and express-mailed them in hopes that they may be of some value to you as you consider Senate Bill 462--the proposed amendment to the Hobbs Act.

In Hawaii, a protective attitude toward crime and the criminal defendant permeates both our criminal justice system and our Legislature--rendering our government impotent when it comes to providing fundamental safety and security to our people.

Unfortunately, the determined young woman addressing you today--Cher Mungovan--is a victim of that protective attitude. Hawaii residents are angered and ashamed by what has happened to the Mungovan family.

In case you aren't familiar with the details of the Mungovan's nightmare, let me share them with you from my perspective. A Viet Nam war hero and building contractor, Walter Mungovan decided to go non-union when he set up his business on the island of Maui because his customized home-building business demanded employees who could be "jacks of all trades." When it became clear that Mungovan was firm in remaining non-union, he and his family were threatened--his automobiles were damaged--tools and equipment were stolen. Mungovan then began tape-recording conversations between himself and union agents. After the FBI said his life was in danger, he installed alarms around his home and began carrying a weapon.

Finally, he when he agreed to testify against two union business agents in a perjury trial, the federal government placed him in their Witness Protection Program. What that means, of course, is that he can no longer live on Maui with his wife and family. Instead, he's living elsewhere in the United States with a new name--living like a hunted animal. And there is the possibility that he will never be able to return home.

This sad story sickens me--not only because a family has been ripped apart and sent into hiding simply because they wanted to be independent--but also because this is precisely the type of corruption the lawmakers in Hawaii continue to ignore.

In every legislative session since I was elected Prosecutor in 1980, we have asked the State Legislature to provide funds for our Office to go after organized crime, white collar crime and public corruption. We have repeatedly lobbied for enlightened legislation which would allow prosecutors to get tough on crime and begin to offer the basic protection so richly deserved by the people of Hawaii. Unfortunately, the politicians in the state of Hawaii are more concerned about the defendant and the "good old boys" who run things here than they are about the safety and rights of those who want nothing more than to live and provide for their families in peace.

What we need to deal with this particular atrocity in our nation is an amended Hobbs Act. I urge all members of Congress to pass Senate Bill 462, sponsored by Senator Charles Grassley, and the House version of the same amendment sponsored by Representative Kenneth Robinson, H.R. 287.

Thank you.

Charles F. Marsland Jr.

Charles F. Marsland Jr.
Prosecuting Attorney

CFM:rr

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 13 1983

Mrs. Cher Mungovan

Dear Mrs. Mungovan:

This is in response to your letter to the President regarding the Enmons decision and its effect upon enforcement of the Hobbs Act. We appreciate the information provided in your letter as well as the facts you provided during your meeting here with Deputy Assistant Attorney General C. Marshall Cain of this office and Gerald Toner of the Criminal Division.

Needless to say, we owe you and your husband a debt of gratitude for your courageous assistance in connection with successful criminal prosecutions in Hawaii. We recognize the sacrifice you and Mr. Mungovan have made which required your husband's entry into the Federal Witness Security Program. Although we make every effort to assist protected witnesses to relocate in a safe area under a new identity, I know that this process often unavoidably results in some hardship, particularly for self-employed businessmen such as your husband who had worked so long to build up a successful construction company.

We were gratified to learn that your experiences with the United States Attorney for Hawaii and the Federal Bureau of Investigation have been positive ones. Moreover, while I gather that you have had concerns with efforts of the National Labor Relations Board, I understand that headquarters officials have met with you and are reexamining their handling of your case by regional NLRB officials in Hawaii in an effort to correct any problems which may exist there.

With respect to your efforts to secure Congressional action on legislation to overturn the Enmons decision, we strongly support your efforts to secure this change in the Hobbs Act. The Reagan Administration is formally on record as endorsing the legislative changes which you seek. While we will continue to take every opportunity to press for enactment of this legislation, I cannot be encouraging as to our prospects for success in light of the fact that efforts have been made for almost a decade to overturn Enmons. I do, however, appreciate your deep commitment to what we in the Department of Justice consider to be a very important criminal justice issue. I was delighted to learn that the Senate Judiciary Committee will be holding a hearing on this issue at which you will testify. In view of your personal experiences, I am certain that your testimony will be very helpful in building a record for legislative reform.

Of course, I wish it were possible for me to be of direct assistance to you but I can assure you that we will continue to press for legislation. In the meantime, we are deeply grateful for your help and hope you will not hesitate to let us know if we can be of assistance in any way.

Sincerely,

Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

Letters sent to Cher Mungovan after publication of newspaper article in Hawaii.

Submitted for the record in hearing before the full Senate Judiciary Committee on Senate Bill S.462. October 25, 1983

" I was married to a man who worked for a non-union General Contractor. I know we were threatened with torching of jobsites, and it was because we did not hire union help. I know for a fact that many contractors have been subjected to the same thing in Hawaii, but have not spoken out because of fear. Too many people are getting away with this type of crime. This has got to stop, and it must be recognized by our government. We have since had to move away from Hawaii because the contractor my husband worked for finally went out of business due to this problem".

C.S. California

" I agree whole-heartedly with your stand. As a union member myself, I deplore the illegal actions of my 'brothers' ".

Honolulu, Hawaii

" Thanks for fighting for me too."

Honolulu, Hawaii

" The blatant arrogance, corruption, miss-use of power, criminal actions etc, of labor unions is an insidious evil which is destroying this great country and many individuals and families like yours. I am sure there are many many other people, including union members like me, who wish you success."

Honolulu, Hawaii

" You are doing something which needed to be brought out into the open. I am with you."

Honolulu, Hawaii

" As a union person for 34 years, I believe that unions have to be responsible and our basic freedoms must be protected. God Bless You."

Honolulu, Hawaii

" Your willingness to oppose union gansterism may well be a major factor in freeing Hawaii from the present union dictatorship."

Honolulu, Hawaii

" I have been a member of this union (the Carpenters) and I am sick of seeing what our union bosses are doing. I don't want to be a party to it anymore, so I am handing in my union book and going non-union. Good luck."

Maui, Hawaii

" I have enormous admiration for you and your husband, for your courage to stand up for your principles, especially when you have to stand alone...all that you have had to sacrifice to make this stand; your business, your economic and physical well-being, and most cruelly, your family life...all have been destroyed because of your refusal to "knuckle-under" and go along with the pressures of the union. The majority of people just sit back and say, "Well, that's the way it is"...I hope that your example and your courage will serve to move others in a similar plight NOT TO BE AFRAID TO STAND UP FOR THEIR PRINCIPALS."

Honolulu, Hawaii

" I am the president of a construction company, the largest open shop contractor in the West. We constantly experience the union mentalities and attitudes. I'm sure it's little consolation but your problem is not unique. However, until courageous people like you and your husband stand up for what is just, nothing will change."

California

" My husband has been a (union) carpenter for 14 years, but the Carpenters Union, without following their own rules, will not count 2 of those years for his retirement or pension, without giving him a written reason. My husband appealed to the National Labor Relations Board here, but was just given the run around, as they were not interested in enforcing the law either. We did not have the money the past two years to pursue the matter in civil court, besides, by the time it would come up on the court calendar, he should be retired anyway. Since returning to live here 14 years ago, I have always felt this State got away with murder, in comparison to other states I have lived in. I was born and raised here and actually have Hawaiian in me."

Honolulu, Hawaii

" Many prayers for some success in this effort to free us from the tyranny of unions, from any organization that wields so much power as to limit, intimidate, and even harm innocent people. We see the necessity for the (Hobbs) amendment because we believe in America and her principles of democracy which seek to ensure freedom from fear, intimidation, unjust practices and violence. Thankyou for taking on the fight that only a rare person dares to take on...for the rest of us and the good of our community and our country."

Honolulu, Hawaii

" The unions bankrupted my husband's plumbing company in California. I wish we'd had the guts (and the money) to fight them as you are doing."

Honolulu, Hawaii

" I am strongly in favor of legislation to outlaw extortion,.period. No license to conduct it by anyone."

Honolulu, Hawaii

" The Mungovan family are 'Walking Tall', and an inspiration for American courage, individuality, and justice. I believe that union power extends across state lines, and that state protective agencies are ineffective to deter violence or threats. The Hobbs Amendment should be permitted to be invoked, with the power to prevent labor union violence, or threats."

Honolulu, Hawaii

" I read yesterday's article in the Honolulu Advertiser about your fight against lawlessness in the union movement and want to be a little encouragement to you all. Your experience is repeated in countless other lives in this state, where union domination of an individual's desire to "make it on his own" has so stunted creativity and growth in the personal lives of citizens of this state, and has eroded the economic and developmental advancement of the state.

It is fearful to realize how much control and paralysis this dread of union reprisal has on the citizen's person and property, not to mention his moral character. It is also frustrating to witness the apparent futility and hopelessness of looking to elected and appointed officials, supposedly 'public servants', to provide for justice and equality in this so-called land of freedom and opportunity. Where can one turn when all these alternatives are spent?"

Honolulu, Hawaii

"I just wanted to be another voice in the crowd and let you know that I think you were being taken advantage of by your state, by your Senators, and by your state's unions. The unions provide the large voting groups for your politicians, so they don't want to bother their good source of votes. It seems the veterans and the citizens are paying dearly, and the thieves are better off than we who are honest. I, too, worked 22 years for the Teamsters Union and could not get my pension. My Senator and the Labor Department said I was justified and should receive it, but they could do nothing. I worked very hard for 22 years, never missing a day, never being absent or late. The union said I should put another quarter of work in the union, but they refused to give me any jobs. It seems all relatives are in the unions. All I wanted was my pension.

The final line is that all unions donate large sums to elections, and also back politicians with the votes, plus donations from the pension funds. The last four Teamster presidents have been convicted of pension fund stealing, and given small sentences, or no sentence at all. So, we the veterans, people who paid taxes, just take abuse. It seems the Mafia is a bit bigger than Congress."

Honolulu, Hawaii

" It is not the unions fault basically - we will always have criminals amongst us - the fault lies with our 'alleged' leaders making laws that allow criminals to behave criminally in a "LEGAL" way."

Honolulu, Hawaii

These letters are submitted for the record without signatures because they were sent to me with the understanding that the names and addresses of senders would not be made public...for obvious reasons.

I certify, under penalty of perjury, that the above letters are true copies of ones received by me.

Cher Mungovan

Cher Mungovan

Senator GRASSLEY. Yes; let me make that pretty clear for everybody. Those of you who have a printed statement, it will be, if you desire, printed in the record in toto and then you can summarize as you see fit.

Go ahead.

Ms. MUNGOVAN. I think the thing which—one of the things which seems most important to me is that I cannot explain what has happened to us for the last 3 years to my son.

I do not know how to explain to him that the right thing to do is always tell the truth when he sees what the truth has done for his father. And I do not know how to explain to him that one should not use extortion and violence against another person because it is against the law when he sees it used against his father and nothing is done.

I do not know how to explain to him to go to the police because they are our protectors and that he can always go to them for help when he has seen my husband ask for help and nobody comes. I do not know how to explain that it is against the law to threaten somebody else's life when he has seen it happen to his father and his employees and nothing happens.

I do not know how to explain to him that his father is on the witness program. For anybody who does not know what the witness program is, it is a program which is devised by the Federal Government to protect witnesses who have testified, usually to save themselves from prison terms and usually against very powerful criminals in this country.

This program is not designed for somebody like my husband who has done nothing wrong, who has never had a parking ticket in his life. I do not know how to explain to my son that the three men who were found guilty this year, although they have been sentenced, are still walking the street, still threatening other people's lives, and they will be out on appeal for at least another year and a half when my husband is taken away from his family, and he is the one who is suffering from all of this.

I do not know how to explain it to my son because all he says is, "But Mom, Dad did not do anything wrong." I do not understand how in effect any Member of this Congress can condone the kind of activity that has destroyed my family and taken my husband away from me by allowing this loophole in the Hobbs Act to exist and by being reluctant to vote for your bill, Senator Grassley.

I cannot compete with the lobbying that is done by anyone up here on Capitol Hill that is in opposition to this bill, but I want to believe that somewhere what is right will prevail over the politics of this issue. I want to believe that my husband's sacrifice and my family's suffering has not been in vain.

Human life and freedom have to be worth more than the politics of an issue, is it not?

Senator, if it is not, then I will go home to Maui and I will take down the American flag that has hung at half mast above my house since May 18 when my husband left, waiting for the day when he is a free man again. And his name may as well be added to the other 58,000 heroes on our black granite wall in Washington, DC, who never got to come home and be free because of the politics of an issue.

I thank you for having this hearing and for allowing me to speak.

Senator **Grassley**. Before I go on to John's testimony, I want to say for both you and Mr. Wohlsen that I am sorry situations like this occur in the United States, and of course we are going to see what we can do about it. And I know that I do not know the pain and suffering you have gone through, but I think your testimony at least brings to light to a greater extent so that we can share to a small degree with your suffering.

Our next witness is Mr. John Ford. Mr. Ford is a lumber worker in Oregon. He was a union member but resigned when a union official in his presence condoned the use of violence during a strike against his employer. We were going to show two parts of a video tape, but we will show them at the end of the hearing unless they are very integral to your testimony, because time is fleeting to such a great extent.

Would it bother Mr. Ford if we do not show your video tape? Does it affect your testimony?

If it does, do not be afraid to respond in the negative, because we can show it.

Mr. **Ford**. I would feel more comfortable if they were shown.

Senator **Grassley**. Then I think what we will do is we will show both the next two video tapes, the one affecting Mr. Ford's testimony and Mr. Pickell's testimony, and we will show them together so that it will take a little less time that way.

Mr. **Ford**. Thank you.

Senator **Grassley**. You may proceed.

Let us just go ahead with your testimony. We cannot take the time while we are fiddling around with some sort of mechanical stuff.

Would you proceed, then.

STATEMENT OF JOHN FORD

Mr. **Ford**. OK. October 2, 1983, a union meeting was held at a local union hall in Willamina, OR. The attendance at the meeting was approximately 90 percent of the total striking force, which consisted of almost 240 workers from Willamina Lumber Co. which had been on strike since July 18, 1983.

At that meeting, Red Russell, who was the chief negotiator for the IWA Local 3-1 was in attendance to fill the crew in on negotiations and to answer any questions that anybody should have.

He was also informing the crew about violence occurring in other parts of Oregon and Alaska. Red Russell did not come right out and say to go out and burn cars or throw paint or golf balls, but he said nothing to the crew about avoiding that type of action either.

Later on in the meeting, during a question and answer session, the question was brought up about having bail money to bail anybody out of jail. At that time there was no bail money set aside, but the union did have an attorney on hand if needed.

A short time later, John Ball, another representative for the union stood up and held up a check for $500 and said that that was the start of the bail fund.

I crossed the picket line on August 5, 1983, and just a short time after the strikers—or just a short time after that, the strikers started throwing paint, golf balls, rocks, which later resulted in a supervisor's car being pretty well bashed in on his going into the company property and eventually leading to the burning of my own personal car, which was parked in my driveway at the time, 5 feet from a natural gas meter and 10 feet from an elderly woman's bedroom window.

Had that gas line been ignited, had the car exploded, darn near half the town would have gone up. That type of negligence darn near cost the lives of over 1,000 innocent people.

Senator GRASSLEY. Mr. Pickell, is the video tape necessary for your testimony?

Mr. PICKELL. Mr. Chairman, it is not necessary for my testimony, but I would recommend somewhere in the proceeding that you look at it because it represents a television station's recording of a death threat, in case anybody does not believe such things really get said.

Senator GRASSLEY. OK. We will do that if I go for another vote and we have to recess, the hearing will do it at that particular time.

I would like to introduce you first. You are with the Brinderson Corp. of Irvine, CA, and you are a member of the Associated General Contractors of America. I assume you are accompanied by counsel Jack Lynch; is that right?

Mr. PICKELL. That is correct.

Senator GRASSLEY. And he is from Great Falls, MT. Mr. Pickell is going to testify about an incident that occurred in the city of Great Falls, MT. I was particularly interested in one passage of your testimony that States that the Governor told you that State law prevented him from taking any action to prevent the violence, and I would like to have you comment on whether or not that is true, and while the sheriff sent men to the site of the picketing, they were outnumbered by a ratio of 20 to 1. And I would like to have you comment, too, whether or not that is true and now I understand that your testimony will bring out these points. So, would you proceed, please.

STATEMENT OF JOHN PICKELL

Mr. PICKELL. Thank you, Mr. Chairman. As a matter of clarification, before I start with my statement, I would like to say that my real name is John Pickell, and I say that just in case anyone would think I was traveling under an alias today. I am not.

Senator GRASSLEY. OK.

Mr. PICKELL. The incidents that I want to represent this morning—and as you commented on—reflect the inability of local and State police to offer protection or to bring prosecution. And they clearly point out the need for Federal jurisdiction over labor violence, in my opinion.

On April 18 of this year my company, Brinderson Corp., was awarded a lump sum, fixed price contract for the construction of a new coal fired powerplant and heating plant and distribution system at the Malmstrom Air Force Base in Great Falls, MT.

The contract was awarded to us by the U.S. Army Corps of Engineers, Seattle district, as a result of competitive bidding for the project.

On May 4, during the time we were mobilizing the project, our company initiated negotiations for a project labor agreement with the Great Falls Building and Construction Trades Council, which is an affiliate of the Building and Construction Trades Department of the AFL–CIO.

Subsequent negotiations and exchanges of proposed project labor agreements between the two groups, our company and the council, took place during the month of June. And a second meeting, face to face meeting, occurred on July 1, 1983.

I can say that progress was made in these meetings, but as of our third meeting, which occurred on July 18, no agreement was consummated, and we scheduled another meeting for August 3.

But on July 22, the building trades initiated, without notice to us violent mass picketing against our corporation and our subcontractors and our suppliers. Also affected were Air Force base suppliers and contractors not involved with the project since all entrances to the Air Force base and the construction entrance were picketed simultaneously.

For the next 10 days sporadic violence was undertaken by the union against Brinderson supervisory personnel, subcontractors and suppliers, and Air Force base suppliers and subcontractors and members of the general public. As a result of the violence, four trucks were damaged, three cars were damaged, six people were injured and required medical assistance, and two people were injured and hospitalized.

The people who required hospitalization, interestingly enough, were not associated with the labor situation in any way. One was a civilian Air Force base employee, and the other was from the general public who wandered onto the scene.

One gunshot was fired into a truck; rocks, slingshots, and tire puncturing devices were used during the mass picketing. Vocal threats were made against everyone who came within earshot of the picket line.

As a result of the violence—and we are getting down to the real interesting significant part here—we sought aid from the local sheriff's office and the county attorney, and I might say we did that by affidavit and in person, as well as from the Governor of Montana, and again in person.

The Governor of the State told us that State law prevented him from taking any action to prevent the violence. He could not send in the State police, and he was prohibited from doing that as well as the National Guard.

The sheriff did send men to the site of the mass picketing, but they were by their own admission outnumbered, up to a ratio of about 20 to 1, and could not ensure the safety of person or property at the site of the picketing.

In a moment I am going to say that we filed for injunctive protection with the Federal court, Federal district court, and the sheriff himself testified that he could not ensure safety for property.

Tensions were also increased during this time through the televising of union members threats against Brinderson employees, and that is the tape that we were referring to before.

The statement that was made on the tape was that it was said that if Brinderson came to Montana, he would never leave. And so you have the tape in your custody.

Because of these actions by the unions and specific union leaders—and I emphasize that last part—against Brinderson Corp. as well as the threat of increased violence, combined with the inability of the local law enforcement officers to contain the violence, Brinderson ceased all operations on the Air Force base.

We then turned to the U.S. district court at Great Falls for injunctive relief from mass picketing and violence. We also joined the U.S. Air Force in seeking an injunction through the National Labor Relations Board procedures.

Here is a very important point: neither of the injunctions were issued.

All of the above information is recorded in detail via sworn testimony in the hearing at the U.S. district court at Great Falls. It is interesting that at this point in time local public opinion rose up against the union violence, and the accompanying negative publicity regarding the city of Great Falls.

And then Governor then appointed a citizens task force to attempt to revive the labor negotiations. After some discussion, the unions agreed to rejoin the negotiations. Having no other alternative available, because we had exhausted all the alternatives as far as our company was concerned to resume work at the site, we also agreed to resume negotiations.

The project labor agreement was subsequently consummated, and then we were finally able to restart the project. As a result of the mass picketing and violence, Brinderson Corp. sustained direct damages in the amount of about $200,000, as well as a schedule delay of more than a month, and the estimated indirect impact of that delay is about $300,000.

In addition, people were injured and the U.S. Air Force sustained some interruption to the base services, both resulting in an unknown added cost on top of the numbers I have mentioned. The overall impact in terms of the project completion and schedule impacts are not yet completely known.

As a note, I would like to point out that the Malmstrom Air Force Base is a missile command base and represents a missile wing of the Air Force.

Senator, we also have, Mr. Chairman, additional material on this situation with us, including press clippings, other videotape, and court records. We would make them available to the committee for the record if the committee is interested.

It is our belief that to initiate a strike involving violence during continuing bargaining clearly represented intimidation of the contractor. The union's belief that they can act in a violent method toward a contractor and be free from law enforcement in these acts is true.

It is a fact that the responsiveness of law enforcement as well as the judicial system at not only the local and State level, but in this case even at the Federal level, is completely lacking. And it would appear that all of their hands are tied. The result is undue intimidation of the contracting system, which delays projects and, in the end, drives up costs. Those costs in the end are paid by the general public.

The situation I have described demonstrates a need for protection against these activities. And your bill, Senator Grassley, S. 462, would amend the Hobbs Act to allow Federal law enforcement officials to become involved in these kinds of violent situations and we are asking and I am encouraging you to act favorably on the legislation.

Thank you very much.

Senator **Grassley**. Thank you very much.

The extent to which some questions I am going to ask each one of you is repetitive of what has already been said by you or by the videotape, I want to make clear that we are asking these for the purpose of building a record and for the sake of clarity.

What was the express purpose of the picketing by the carpenters' union that your company experienced, Cher?

UNION CONTRACT WANTED

Ms. **Mungovan**. It was solely to get my husband to sign a contract and not to get our employees to become members of their union. The union was not interested in organizing our employees. They wanted us to get rid of our employees, sign a contract with their union, and rehire workers through the carpenters' union.

Senator **Grassley**. And that was their real purpose, in your estimate, not just their hidden purpose.

Ms. **Mungovan**. That was their only purpose, according to the microcassette tapes that my husband taped of conversations.

THREATS TO LIFE AND PROPERTY

Senator **Grassley**. When did you first experience force, violence, or fear directed against you or your property?

Ms. **Mungovan**. My husband was worried about the threat of arson after the initial meeting with an agent of the carpenters' union in December 1980, and we have since received and our employees and various people have received threats to their life, to their property. We have had property stolen, vehicles maliciously damaged in our driveway, and various other acts of violence.

INVOLVEMENT OF CARPENTERS' UNION

Senator **Grassley**. By whom were these acts committed?

Ms. **Mungovan**. Some of them we know for a fact were business agents from the carpenters' union. Others we presume to be business agents of the carpenters' union or agents of the union. And I am referring to the death threats on the phone because, of course, they do not tell you who it is that is calling, and they did not leave a note on my car, either, but we have never had any enemies, and specifically, my husband has never had any enemies in his life. And this all happened during the picketing and after they found out that we had gone to the Federal Government with the microcassette tape.

Senator **Grassley**. Were these acts committed with the approval, knowledge, and authority of officers of the union in addition to the business agents that you already referred to?

Ms. **Mungovan**. These were officers of the union.

Senator **Grassley**. What was the purpose of the force, violence, or fear directed against you?

Ms. **Mungovan**. Initially it was to get us to sign a contract; afterward, I think it was to prevent my husband from testifying against them. The union had—I mean, although Mr. Kupau considers this charge of perjury as silly and stupid, it is the first time in the State of Hawaii that unions have been caught in the act with evidence and the first time that they have been taken to court.

Senator GRASSLEY. Did it have the effect on you or others that it was intended to have, the force and violence, and fear that was directed against you?

Ms. MUNGOVAN. Yes, it did, and on our employees, obviously, when they had their lives threatened; anybody is upset about that. It had the effect that when we had to put all our employees on unemployment, on the unemployment line, they had a hard time getting jobs after that. In fact, one of our employees has had to move to the mainland. One of them moved in order to get a job.

Another employee moved out of the country.

NO RESPONSE FROM POLICE

Senator GRASSLEY. At the time the incident occurred, did you or someone else contact the police or other local law enforcement officers?

Ms. MUNGOVAN. We have contacted the police, and we did at the time, I think, at least every other day for 3½ months.

We have had no response from them.

Senator GRASSLEY. What was the response from the local law enforcement officials?

Ms. MUNGOVAN. Well, the police came to our jobs eventually. One of the police officers came to our jobs and walked over to a business agent from the carpenters' union and told him not to talk to my husband because he was carrying a tape recorder; that is just one instance.

Senator GRASSLEY. Were any arrests made?

Ms. MUNGOVAN. Of course not, Senator.

Senator GRASSLEY. Were any charges filed?

Ms. MUNGOVAN. They filed—out of all the complaints that we filed, they filed only three reports. They only filed three reports; they did not issue any complaints against them. And the prosecutor, the county prosecutor would not prosecute.

Senator GRASSLEY. They have not been prosecuted at this point?

Ms. MUNGOVAN. Only in the Federal perjury trial. We could only get the U.S. attorney's office to do something at all regarding this case.

I must—I would like to add that the State prosecutor for the State of Hawaii is very much against crime, and if he had the law and the legislature and the judicial persons on his side, he would prosecute this type of case, but he has a real problem in the State of Hawaii, and I would also like to make you aware that I have submitted a copy of the letter from our State prosecutor, Charles Marsland, in support of your legislation and outlining the reasons why he thinks that we need it in his State and my State and all over this country.

And I also would like to note that I have submitted for the record a letter that I got from the Assistant Attorney General of the United States, Office of Legislative Affairs, in which they state that the Reagan administration is supporting this legislation that you are proposing.

Senator GRASSLEY. OK. Then there have been no arrests; there have only been charges filed. Nobody has been prosecuted. No sentences have been imposed.

Then has anything at all been done to these persons who have used force, violence, or fear against you?

Ms. MUNGOVAN. They have been found guilty and sentenced on perjury charges only. And they are out on appeal now, which is going to take approximately 1½ years. The financial secretary of the union, Mr. Kupau, and another business agent are going to trial next Tuesday—I have to be back in Hawaii—on 14 counts of perjury. But we cannot prosecute them for anything else under the Federal law because of the loophole in the Hobbs Act.

UNION LAWSUITS COSTLY

Senator GRASSLEY. Am I correct that there has been a defense fund established for you, and if so, what has been the extent of your debt? I think you gave us that in your testimony, but I would like to have you repeat it at this point.

Ms. MUNGOVAN. A defense fund was set up for me after my husband went on the Federal Witness Protection Program because I cannot pay the legal fees. And these fees are incurred not only to press our suit against the union, but also to defend ourselves in three unfounded lawsuits that were filed against us solely for the purpose of harassment.

Mr. Kupau told us in 1981 that he would tie us up in the courts until we ran out of money, and we did, and it is a very easy thing to do when you are using the union's moneys to do it.

The fund was set up by some attorneys in Honolulu so that I might be able to raise money to help me pay my attorney's fees.

Senator GRASSLEY. Mr. Ford, I also want to ask you some questions that you may have already referred to, but I want to build a record so that that record is very clear.

What was the express purpose of the strike that your union engaged in this summer?

Mr. FORD. It was the end of the existing working contract, and they were negotiating a new working contract for the next 3 years.

Senator GRASSLEY. What was the real purpose of the strike, or was there a purpose beyond the contract?

Mr. FORD. No, that was it.

Senator GRASSLEY. Were you a union member?

Mr. FORD. Yes, I was.

Senator GRASSLEY. When did you first experience the use of force, violence, or fear directed against you or your property?

Mr. FORD. OK. That would be the second day I went back to work; one of the picketers tried to walk out in front of me when I was driving through the gate, and that was the first incident. I have had two other incidents at my house prior to the car burning. Both involved paint. One night somebody had gone into my yard and dumped a gallon of brown paint on the hood of my pickup. Another night, somebody threw a balloon filled with a different color paint, threw that at our family car.

And the last one was the burning itself.

Senator **Grassley**. Do you know by whom these acts were committed?

Mr. **Ford**. No, I do not.

One arrest was made on the burning itself. They had to drop charges on that person because they did not have enough binding evidence. There is one little catch; there is still evidence being laboratory tested and they are waiting for the results on that.

Senator **Grassley**. Even though you cannot identify the people, do you think that these persons committing these acts that you have just described to us hold any office in the union or act with the approval, knowledge, or authority of any officer in the union?

Mr. **Ford**. Not to my knowledge.

Senator **Grassley**. What was the purpose of the force, violence, or fear directed against you?

Mr. **Ford**. I have no idea.

Senator **Grassley**. Did it have any effect on you or others?

Mr. **Ford**. Not really.

Senator **Grassley**. Do you have any firsthand knowledge of similar acts being directed against you or others in your situation?

Mr. **Ford**. The only other one that I can describe right now is the supervisor's car that got beaten up on the way in through the gate. He was driving through and some people threw rocks, broke some windows, and threw balloons filled with paint in his car, on his car. He had several dents on the body itself.

Senator **Grassley**. Do you know whether or not that damage inflicted or the threats to him had any effect on him, changing his behavior or anything?

Mr. **Ford**. No.

Senator **Grassley**. Recalling the acts of violence against you personally, did you or someone else contact the police or other local law enforcement authorities?

Mr. **Ford**. Yes, we did.

Senator **Grassley**. What was the response of local law enforcement authorities?

Mr. **Ford**. They took reports, and that was the extent of it.

Senator **Grassley**. No arrests were made?

Mr. **Ford**. No. Just the one arrest on the burning.

Senator **Grassley**. No charges filed?

Mr. **Ford**. No.

Senator **Grassley**. Mr. Wohlsen, what was the express purpose of the picketers that appeared at your job site this summer?

Mr. **Wohlsen**. Having dealt with them before on similar situations, the express purpose was to unionize my own carpenters, laborers, steel erectors, and so forth, and that all the subcontractors on the project would be union.

Senator **Grassley**. Were these picketers generated by members of any particular union?

THREATS BY THE PHILADELPHIA BUILDING TRADES COUNCIL

Mr. **Wohlsen**. They were all representing themselves as a part of the Philadelphia Building Trades Council, which covers all types of construction trade unions.

Senator **Grassley**. When did you first experience the use of force, violence, or fear directed against you or your property?

Mr. **Wohlsen**. Well, the first experience I had felt, it was at the Brandywine River Museum on that day of June 8.

Senator **Grassley**. To your knowledge, had such violence or fear been directed against any of the people who worked for you?

Mr. **Wohlsen**. It most certainly was, and they reacted very emotional and fearful about it. They are scared.

Senator **Grassley**. Had any property previously been destroyed, and what was the dollar value of that property?

Mr. **Wohlsen**. On that particular job, there had not been any destroyed property. There has been on other jobs.

Senator **Grassley**. With your company?

Mr. **Wohlsen**. With our company.

Senator **Grassley**. By whom were those acts committed?

Mr. **Wohlsen**. They were committed by representatives of the Philadelphia Building Trades Council, as shown on the tape.

Senator **Grassley**. Assuming you can identify all your attackers, did these persons committing the acts that you have described hold any office in the union or act with the approval, knowledge, or authority of any of the officers of the union?

Mr. **Wohlsen**. Yes, they do. And the president was there leading the attack.

Senator **Grassley**. I notice in the video tape that there was a bus in the background. Was that bus used to transport the persons who attacked you or your property?

Mr. **Wohlsen**. It was used, yes, sir.

Senator **Grassley**. Do you happen to know who owned or leased the bus?

Mr. **Wohlsen**. I personally do not know.

Senator **Grassley**. I noticed also on the video tape that you appear to place your hand in the front of the face of one of the picketers prior to his assaulting you. Can you tell us what happened?

Mr. **Wohlsen**. Well, I have never had anyone spit in my face, and I did not know any other way to stop the saliva from coming onto my being.

Senator **Grassley**. What was the purpose of the force, violence, or fear directed against you?

Mr. **Wohlsen**. To unionize my employees and my subcontractors.

Senator **Grassley**. Do you have firsthand knowledge of similar acts being directed against others in your situation?

Mr. **Wohlsen**. Yes, sir.

Senator **Grassley**. Has it had an effect on you or others?

Mr. **Wohlsen**. Yes, sir, it does have an effect.

Senator **Grassley**. What was the response of local law enforcement officials?

Mr. **Wohlsen**. I think I would have to say it is similar to that which you heard this morning. They come there, but a little late, and somewhat outnumbered.

Senator **Grassley**. Were any arrests made?

Mr. **Wohlsen**. No arrests were made, but the charges are still pending and probably will be executed, but that is a small charge that comes out of them.

Incidentally, if it is of any value, the picketers also pushed a State policeman. There were only two of them. I would have to assume that if we pushed one of the metropolitan policemen out here we would get fined for something.

Senator **Grassley**. Then I assume nothing has happened to the persons who used force, violence, or fear against you.

Mr. **Wohlsen**. That is correct, sir.

Senator **Grassley**. Besides the physical violence against you that ended in your operation that you described so well during your testimony, what has been the effect of this incident on you and your family?

Mr. **Wohlsen**. Well, I think my family has become more concerned about it than I am, particular my wife. And I guess after being here today, I do not have the slightest idea what might happen. There is always the probability.

Senator **Grassley**. Do you believe that as a result of what you have experienced that anybody else in your community will be less likely to do what you did and oppose the union in the future?

Mr. **Wohlsen**. I do believe that, yes.

Senator **Grassley**. Was the union that picketed your jobsite affiliated with any other organization?

Mr. **Wohlsen**. Well, as I said, the Philadelphia Building Trades Council, and they are all affiliated with AFL and so forth.

Senator **Grassley**. Has any action been taken by any labor organization to disavow what has been done to you?

Mr. **Wohlsen**. No, sir; there has not been anything said of that nature.

Senator **Grassley**. Do you conclude, then, that the organizations that were involved in the attack on you condone those actions?

Mr. **Wohlsen**. Do I believe that, yes.

Senator **Grassley**. Mr. Pickell, what unions were involved in the incidents you described?

Mr. **Pickell**. You mean specific unions?

Senator **Grassley**. Yes, the specific incidences of violence.

Mr. **Pickell**. As I stated in the testimony, the Building and Construction Trades Council was the basic instrument used for the picketing and violence. They represented all of the construction trade unions in the Great Falls area, which number 15 trades and 13 unions.

And so, I mean, without naming all of them, carpenters, laborers, ironworkers, and so on.

Senator **Grassley**. What was the purpose of their picketing?

Mr. **Pickell**. The purpose of their picketing, you have to remember that we initiated a negotiation for a project labor agreement. The purpose of their picketing was to cause us to yield ground in the negotiation, and therefore, I believe, extort from us more payment of money and additional working, costly working conditions.

It was to not have to give up anything from their side in the negotiations.

Senator **Grassley**. Do you know if any of the people committing the acts that you have referred to hold any office in the union or act with the approval, knowledge, or authority of any officer in the union?

Mr. **Pickell**. Mr. Chairman, may I consult with Jack Lynch for just a moment on this question?

Senator **Grassley**. Yes, you may. Would you introduce yourself, sir.

Mr. **Lynch**. My name is Jack Lynch. I am a labor lawyer from Great Falls, MT.

Senator **Grassley**. OK.

[Pause.]

Mr. **Pickell**. Mr. Chairman, we met with the county attorney in Great Falls in person and supplied him with an affidavit, and in direct answer to your question, and it was the subject of the affidavit as well, the president of the Building and Construction Trades Council was one of the identified leaders, which was substantiated in the testimony in Federal court in these actions.

Senator **Grassley**. The purpose of the violence directed against your company was strictly economic?

Mr. **Pickell**. I believe that that is correct, Mr. Chairman.

Senator **Grassley**. Would you guess that that purpose was primarily to benefit the union and its members or to benefit an individual officer of the union?

Mr. **Pickell**. I do not think I could give you any more than a subjective answer, and I would decline, Mr. Chairman. From what I could speak to, it was intended to enhance the potential contract that they might have been able to negotiate with us, and which in fact did occur.

I also believe that since the negotiations were difficult, they also intended to show us that we could not ever consider going nonunion on the construction site.

Senator **Grassley**. Do you characterize what the union did as a legitimate union objective, and those three words I use in the same vein I did when I read from the statute and the Supreme Court decision?

Mr. **Pickell**. Do you mean, do I think it was OK for them to do that?

Senator **Grassley**. Well, do you think they were in pursuit of legitimate union objectives to best represent the interest of their members?

Mr. **Pickell**. I believe that they thought so. I believe that the experience that I have had, which has been all over the country in negotiating agreements very similar to this, no such thing has ever occurred before. They were not willing to rely on normal collective bargaining practices and procedures to gain the ends that they desired, so they resorted to violence instead.

Senator **Grassley**. Well, you see if they were in pursuit of legitimate union objectives, then of course they are not violating the Hobbs Act. It would not be extortion under the statute, you know.

Mr. **Pickell**. Yes, sir.

Senator **Grassley**. I think, obviously, you believe that it did fall within the realm of extortion.

Mr. **Pickell**. I do believe that; yes, sir.

Senator **Grassley**. What was the response of local law enforcement officials, including State officials?

GOVERNOR UNSUPPORTIVE

Mr. PICKELL. As I indicated in the testimony, the State official that we met with in person was the Governor, and I already stated that he indicated that he could not support us from the State position, either in terms of National Guard or State police.

I would like for Jack Lynch to respond to the local level, because there are some details worth mentioning.

Senator GRASSLEY. Proceed.

Mr. LYNCH. Mr. Chairman, the local law enforcement officials were notified of the violence that was going on, and they responded as well as they could, considering the mass picketing which was taking place, up to 100 picketers at a time.

There really wasn't anything they could do. On August 1, 1983, in a period of 2 hours, three separate acts of violence occurred which amounted to a felony in each instance, aggravated assault.

Individuals were arrested and charged with misdemeanor assault. It was our feeling that because of the political influence that the unions have in the community that local elected officials were afraid to take any responsible action in order to stop the situation.

The only thing that could be done on August 1 to stop the violence was for Brinderson Construction to shut down its job and—on Marlmstrom Air Force Base. Law enforcement could not and would not ensure the safety of Brinderson personnel or property trying to get on to the base.

Senator GRASSLEY. That completes my questioning of this panel. I want to thank all of you for participating. I know that this was not an easy thing for you to do.

Some of you have had pressure brought on you not to testify, and your willingness to come and bring matters like this out in the open is a great thing for you to do, not only for its importance to the legislative process, particularly as the legislative process works, that no one can find any fault with simply laying facts out on the table and give each of these facts a chance to be weighed and refuted.

You have at least, from your standpoint, had an opportunity to have the facts presented, and I am sure as well would be willing to find people who think that your facts are adequate. I appreciate your attention, and I would now call the next panel of witnesses.

I will reconvene the hearing and call the second panel, and I will introduce each of the second panel before they testify. Dr. Stephen M. Haseler, former Deputy Mayor of Greater London, England from 1963 to 1973. As an elected official, he was elected as a member of the Labour Party. Dr. Haseler has his doctorate in labor history and received his doctorate from the London School of Economics. He is the author of four books on British politics in the 20th century and on the labor movement.

Dr. Haseler has broken with the Labour Party and is one of the founders of the Social Democratic Party. He is a visiting fellow at Georgetown University.

He testifies today not as a victim of union violence, but as someone who can give us the benefit of his very similar experiences with violence in the labor relations area and his government's response.

The next witness, Mr. Michael Ashy, is a log stacker operator at the Louisiana Pacific Co., in Idaho, and it is my understanding that he is also a former police officer in San Diego.

Is that right?

Mr. **Ashby**. Southern California.

Senator **Grassley**. I appreciate Mr. Ashby's coming because obviously he has had to take time away from his livelihood to be here with us.

Sheriff Ron Smith is sheriff of Boundary County, ID, and when he had written to us he was deputy sheriff. I would ask you to begin, Dr. Haseler, and I would like to ask you to summarize if you could because this has taken more time than I had anticipated, but it is a very important issue, and I am going to stay here until we have it done.

Would you proceed.

STATEMENTS OF DR. STEPHEN M. HASELER, FORMER DEPUTY MAYOR OF GREATER LONDON (LABOUR) AND VISITING PROFESSOR AT GEORGETOWN UNIVERSITY; MICHAEL T. ASHBY OF IDAHO; AND SHERIFF RONALD R. SMITH, BOUNDARY COUNTY, ID

Dr. **Haseler**. The British experience of trade unionism and trade union practices may be very relevant in your deliberations.

Great Britain has the most deeply entrenched trade union organization in the world. From the time of the industrial revolution onward, trade unions have played an increasing role in British Government.

Britain possesses the most favorable legislative environment of any Western country for trade union activities. In no country do trade unions have a freer rein. Britain is now a country in which industrial disputes have tended to become a way of life, and these disputes particularly in the 1970's achieved an intensity which brought in question the stability of the social fabric.

And so it ought to be pointed out that by and large Britain's profoundly entrenched trade unions have not historically engaged in violent behavior to further their ends. And during Britain's famous general strike in 1962, there was very little violence, and the well known image of the strikers playing soccer with the policemen at the height of the strike is in no way a distortion of reality.

The most deadly serious industrial disputes, both in the private and public sector, have taken place in a general atmosphere of civility. Industrial disputes of the most visceral kind have not, at least until recently, degenerated into violence, at least the kind often associated with labor disputes that we have been talking about.

My point is that a strong labor union can coincide under the rules of civilized conduct. Historically, Britain's labor movement has seen their power as located in their ability to collectively withdraw their labor, and there is no industrial dispute that I know of anywhere in which firearms have been used, and few in which property has been wilfully damaged.

There have been examples more recently of illegal occupation of property, so-called sit-ins, but this kind of practice is essentially of a passive or nonviolent kind.

In the 1970's there have been examples of minor violence on picket lines and intimidation of one member by another to assure conformity with the aims of the strike. Even so, sanctions applied to the workers lies in the ability of the union to withdraw membership, which effectively means that the member would lose his job.

The point I am making here is that British trade unionism remains a powerful force. It possesses the support of its members. Violent picketing in which local picketing situations sometimes get out of hand, leading to a minor scuffle is an occasional occurrence in strikes in the United Kingdom, but the violence of which I have heard here is absent from the British scene.

In concluding, as a labor historian looking at Britain, free trade unionism within a free society can only rest upon two fundamental foundations. First, collective bargaining and the right to strike must be enshrined in the law.

Second, trade unions are ultimately only as powerful and successful as their members allow them to be. In our civilized industrial societies, union members are intelligent and mature enough to understand both the advantages and the abuses of trade union power. If a labor grievance, be it over wages or conditions, is profound enough, collective action with resort to illegal force can and will be used.

In my own country, great gains for working people have been achieved by peaceful collective bargaining without response to force, extortion, or other means.

That is a summary of a much more general paper I wish to put before you.

Senator **Grassley**. We thank you, Dr. Haseler.

Mike, would you proceed?

STATEMENT OF MICHAEL T. ASHBY

Mr. **Ashby**. Thank you.

I have been an employee of Louisiana-Pacific for 7 years. It is a closed shop. You must join the union if you work there. On June 27th of this year, the union went out on strike. The general membership, or the local membership, was informed that the local would go out on a grievance that had been taken to one of the final steps of the grievance procedure and we were further told——

Senator **Grassley**. I am going to have to ask you to speak loudly, because we don't have a microphone system. The only microphones working are those being used by the video. I would appreciate it if you would speak loudly.

Mr. **Ashby**. We were informed that the reason for going out on strike with the grievance was that if we did not, the mill would be struck by picketers from Louisiana-Pacific's Pilot Rock, OR, organization, and we would not be eligible for strike benefits or strike pay.

Therefore, it was decided without a vote of the local membership to go out on strike, and I will quickly try to go in chronological order of what I have seen and/or experienced in terms of violence.

I would like to, before I go into that, to indicate that on July 9, 1983, the last union meeting that I attended, we were updated on strike-related—rather, let me correct that—to what had taken place thus far in negotiations with the Louisiana-Pacific by the bargaining committee.

This information was related to us by a J. Paresio, who was executive secretary of the Inland District Council—correction; he is Portland Post district secretary. Along with him was Bill Brothers, assistant secretary to the Inland Empire Council.

Mr. Paresio stated that the contract offered by Louisiana-Pacific stunk. He wouldn't read it to us. It took me 30 minutes to read it in its entirety. He stated it would take him 2 hours to read it to us.

One of the most important things I think was told us by Mr. Paresio when asked what could be done about the scab labor and the independent log truckdrivers that were hauling cedar out of our log area, what could be done about these people, Mr. Paresio said that the scabs are not working at the plantsite 24 hours a day, and the truckdrivers were not on Louisiana-Pacific property all the time, either.

A question was raised as to what he meant, and his comment was, "I cannot tell you what to do, but you can use your imagination."

The comment was delivered by Mr. Paresio, and a lot of nodding and smirking was seen by me on the part of Mr. Brothers.

Another member of the INS stated that some of these log truckdrivers are our friends and relatives. It is a small community up there. Mr. Paresio said, "If they are not on our side, then they are not our friends."

An additional comment was made that we could get into trouble with the law. Mr. Paresio stated, "Well, look at me. I have been in jail. There are no marks on me. It didn't hurt."

Again, much affirmative nodding and smiling by Billy Brothers and a very smug look on Mr. Paresio's face, and the union hall, in my estimation, turned into pandemonium. Comments were made, "Yes, we'll get those bastards," and "Let's get out bats right now and get them."

Following this meeting, violence in my estimation really began. Log trucks begain experiencing flat tires due to these items (indicating). Over the last several days, traffic——

Senator GRASSLEY. Before you go on, why don't you describe the instrument of damage put on the table?

Mr. ASHBY. This is a coffee can lid. As you can see, it is filled full of 16-penny nails. The union has a terminology for these things. They are called "frisbees." They are flung, as a frisbee would be, in the path of a tire.

On July 21, 1983, I went back to work. I have five children, and could not stay out of work any longer. Day one, the first day back, I was threatened from across the picket line, "We'll get you," et cetera. The following day I was egged on my way to work by the local union's vice president. On that afternoon, July 22d, another new hiree of the Louisiana-Pacific suffered minor facial injuries from a rock. A rock passed through his vehicle, the right side of his vehicle, with glass striking him in the face.

That night, a log truck owned by the brother of the other victim was hit by three rounds from a shotgun while the truck was parked in the owner's driveway.

On July 26, a new hiree of the Louisiana-Pacific, a woman, had all her tires and the vinyl roof of her vehicle slashed when it was parked downtown.

During the second week of my return to work, I was riding to work with a salaried, nonunion employee of the Louisiana-Pacific. That afternoon as I was watching my driveway, I found 5 pounds of roofing nails strewn across my driveway. It was obvious to me that they were strewn in a manner that it would have been impossible to avoid crossing over them.

The next morning, as my ride was coming into my house to pick me up, he ran over one of these here (indicating) five nails punctured the front tire of the vehicle, but we managed to make it to work on it. When I got to work I called my neighbor near whose driveway this thing was found, and he discovered another three of them, all buried in the gravel that far up (indicating), with just the points of the nails showing. There are a lot of little children in this neighborhood.

On August 1, the Louisiana-Pacific Co. obtained a TRO [a temporary restraining order] against the union, and on that morning the union staged a mass picket demonstration—in violation of the TRO, I might add—with the president of the local at the forefront of the picketing.

On August 2, 1983, I was standing in front of one of the buildings at the company, and a ¾-inch lug nut, the type that is found on the wheels of automobiles, whistled by my ear and slammed into the building. It was followed by rock particles and steel ballbearings. I feel strongly, from the velocity at which they were coming at me, that they were fired with a wrist rocket, a type of sophisticated slingshot. There were two union members present on the picket line at that time, and that afternoon a union member was shot at by one of these guys with a BB gun, with the round striking the left front door.

On August 4, 1983, the union vice president was charged with a felony count of assault. The gentleman was accused of firing a flare gun at a LP security officer, and this incident took place on company grounds, and the vice president stated to the news media that he did draw and threatened to shoot. He was released on $2,000 bond, and his trial is pending.

On August 5, 1983, I, along with a fellow worker, was watching two employees coming back to work on their first day back to work since the strike. As they crossed into the company grounds, I observed the president of the local pick up a rock and throw it against the door of this employee.

On August 10, 1983, the courts lifted the TRO, and I am a lay person. I do now know the reason for the lifting other than to put it in the specific terms, it was apparently the wrong color restraining order. That night, the violence reached new heights. Two chip cars, railroad cars, were involved. One was derailed and one was set afire with a Molotov cocktail. Windows of the company office building were totally demolished. There was not a window left facing the picketers. Street lights, et cetera, around the area were shot out. It is my understanding that the police cars were rocked that night, also.

As people were attempting to extinguish the blaze in the boxcar, or chip car, they were rocked. Several of them were hit. Among these was the plant manager, Chris Paulsen.

These gentlemen all indicate that at the scene were union members, with the vice president near the site of the chip car fire.

I might add that two additional Molotov cocktails were thrown at these gentlemen as they were attempting to put this fire out.

The following morning, August 11, at 4:45, I was going to work with a fellow employee in a pickup truck. As we approached the main entrance, there was a large group of union members gathered there, and I knew we were in trouble. In fact, I made the comment to my friend that we were in trouble.

As we approached that group, the air was immediately filled with rocks. Several of these rocks struck the pickup, one of which broke the left side window, strewing broken glass across the driver's face, and the rock came to rest on my side of the pickup. People I saw throwing rocks were the president of the local and the ex-vice president of the local.

We continued on. More rocks were thrown at us. I immediately made my way back to the office after getting onto the plant complex. When I walked in, that office building was a shambles. Rocks, ballbearings, marbles, et cetera, were strewn about with broken glass.

I stepped out on the porch of that office and was immediately challenged to come out and fight. While standing there, I saw another nonstriking union member coming to work in a pickup. As he passed by this group of picketers, he was rocked. The gentleman panicked, and was unable to get his pickup shifted into a lower gear, which left him within range of these people for a longer time than necessary. One rock struck the rear window of his pickup and broke it out.

At that time, I noticed a union member busily placing planks across the driveway, in an obvious attempt to either stop or hinder anyone else coming in. Some experts were coming in driving a Jeep four-wheel drive. He drove to these planks and obviously stopped. The minute he stopped, he was bombarded. He managed to drive across these planks, and made his way into the plant.

Senator **GRASSLEY**. How much more time do you need, Mr. Ashby?

Mr. **ASHBY**. Five minutes.

Senator **GRASSLEY**. Could you summarize in the interests of time, please?

Mr. **ASHBY**. Sure. The two more serious incidents that occurred, we were—someone sabotaged the main power pole and dropped it. The city was without power for 18 hours, and the LP plant was without power for 2½ hours—2½ days.

The last serious incident was the explosion of a bomb-like artillery device planted on, or thrown onto the plantsite. If anyone had been near that device when it exploded, he would have either been killed or seriously injured.

In summary, I would like to say that I have either been directly involved in these incidents or have seen the aftermath thereof. I didn't go into details about throwing the star-shaped, and all the puncturing devices, et cetera.

In closing, I would like to express the opinion for this type of situation to continue to exist in the United States is shameful, particularly when it is so evident to me that this violence has been perpetrated and condoned by the top union officials of the LPIW.

Thank you.

[Prepared statement follows:]

TESTIMONY BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
HEARING OCTOBER 25, 1983,
BY MICHAEL T. ASHBY

MY NAME IS MICHAEL T. ASHBY. MY ADDRESS IS HGR 85, BOX 288, BONNERS FERRY, IDAHO, 83805. I HAVE BEEN EMPLOYED BY THE LOUISIANA PACIFIC CORPORATION SINCE DECEMBER 3, 1976, AT THEIR MOYIE SPRINGS OPERATION, MOYIE SPRINGS, IDAHO. MY JOB TITLE IS LOG STACKER OPERATOR, AND I WORK IN THE LOG YARD UNLOADING LOGGING TRUCKS. I AM A MEMBER OF THE LUMBER, PRODUCTION AND INDUSTRIAL WORKERS OF AMERICA, LOCAL #3171, AND HAVE BEEN SINCE THE AFOREMENTIONED EMPLOYMENT DATE. THIS IS A CLOSED SHOP MILL; (I.E., HOURLY PERSONNEL MUST JOIN THE UNION IN ORDER TO HAVE EMPLOYMENT THERE). I AM NOT AN OFFICIAL OF THAT UNION, NOR AM I A PART OF THE MANAGEMENT TEAM OF LOUISIANA PACIFIC.

OVER THE PAST SEVERAL YEARS, I HAVE ATTEMPTED TO TAKE AN ACTIVE INTEREST IN THE LOCAL UNION. I WAS CONCERNED OVER THE GENERAL APATHY OF THE MEMBERSHIP. ON SEVERAL OCCASIONS OVER THE YEARS I TRIED TO GET THE MEMBERSHIP INVOLVED IN THEIR UNION, WITH LITTLE SUCCESS.

ON JUNE 27, 1983, LOUISIANA PACIFIC'S MOYIE SPRINGS OPERATION WAS STRUCK BY THE UNION. THE PRECEEDING FRIDAY, JUNE 24, 1983, I LEARNED OF THE IMPENDING STRIKE FROM JESSIE BELL III, VICE PRESIDENT OF LOCAL #3171. HE INFORMED ME AT THAT TIME THAT THE LOCAL WOULD GO OUT ON A "LOCAL ISSUE." THE GRIEVANCE WAS THAT DON SAPPINGTON, LOCAL UNION PRESIDENT, AND ANOTHER LOCAL MEMBER, HAD TAKEN THROUGH THE FINAL STEPS OF THE GRIEVANCE PROCEDURE.

MR. BELL STATED THAT THE REASON FOR GOING OUT IN THIS MANNER WAS TO RECEIVE STRIKE BENEFITS, OR PAY. HE SAID THAT IF WE DIDN"T GO OUT OVER THIS GRIEVANCE, WE WOULD HAVE PICKETERS IN FRONT OF OUR MILL FROM LOUISIANA PACIFIC'S PILOT ROCK, OREGON, OPERATION, AND WE WOULD HAVE TO HONOR THEIR PICKET LINE IN SYMPATHY. CONSEQUENTLY, WE WOULD GET NO STRIKE PAY. I POINTED OUT TO MR. BELL THAT IMPENDING STRIKES WERE SUPPOSED TO BE KNOWN ONLY TO A SELECT HANDFUL

OF PEOPLE AND THAT COMMON KNOWLEDGE WAS NOT PERMISSIBLE UNDER THE UNION BY-LAWS. MR. BELL INFORMED ME TO "MIND YOUR GOD-DAMN BUSINESS," AND "TO LEAVE UNION BUSINESS TO THE ELECTED OFFICER." I THEN ASKED HIM HOW IT WAS THAT WE COULD GO OUT ON STRIKE OVER A GRIEVANCE WHEN THE MEMBERSHIP HAD NOT BEEN GIVEN THE OPPORTUNITY TO VOTE ON IT. MR. BELL INFORMED ME THAT A STRIKE VOTE HAD BEEN TAKEN IN LATE MAY OR EARLY JUNE AND THAT VOTE SUFFICED FOR THIS IMPENDING STRIKE. I THEN POINTED OUT TO MR. BELL THAT THE STRIKE VOTE WAS TAKEN WITH THE UNDERSTANDING THAT IT WAS TO BE USED AS A BARGAINING TOOL IN CONTRACT NEGOTIATIONS, AND NOT AS A BLANKET CATCH-ALL FOR ANY DISPUTE THAT CAME ALONG. I WAS AGAIN INFORMED TO "MIND YOUR OWN GOD-DAMN BUSINESS AND TO BE ON THE PICKET LINE MONDAY MORNING."

DURING THE COURSE OF THAT WEEKEND, I DISCUSSED WITH SEVERAL UNION MEMBERS THE IMPENDING STRIKE AND PROPRIETY OR IMPROPRIETY OF THE GRIEVANCE BEING USED TO GO OUT ON STRIKE. THE GENERAL CONSENSUS WAS TO "WAIT AND SEE," BUT THAT THE USE OF THE GRIEVANCE WAS, AT BEST A SHAKY PROPOSITION.

ON JUNE 27, 1983, AT APPROXIMATELY 5:00 A.M., I WENT TO THE MILL SITE AND OBSERVED THE MILL HAD BEEN STRUCK BY MEMBERS OF L.P.I.W. LOCAL #3171. MY LEAD MAN, LENNIS GROSS, A UNION MEMBER, WAS THERE. HE INFORMED ME STRONGLY NOT TO EVER CROSS THE PICKET LINE. ALTHOUGH I DID NOT AGREE WITH THE STRIKE, AND DID NOT EVER ACTUALLY WALK THE PICKET LINE, I HONORED THAT PICKET LINE UNTIL JULY 21, 1983.

ON JULY 6, 1983, I ATTENDED AN INFORMAL GATHERING OF APPROXIMATELY TWENTY UNION MEMBERS WHO WERE CONCERNED OVER THE USE OF THE GRIEVANCE FOR THE STRIKE. THESE PEOPLE FELT THAT WE SHOULD BE OUT ON STRIKE ONLY OVER A BARGAINING ISSUE IN THE NEW CONTRACT NEGOTIATIONS, WHICH, FOR OUR LOCAL WOULD NOT BEGIN UNTIL THE END OF JULY. OUR OLD CONTRACT DID NOT EXPIRE UNTIL JULY 31, 1983. THESE PEOPLE FELT THAT SINCE NONE OF US HAD EVEN HEARD OF THE GRIEVANCE, MUCH LESS HAD A CHANCE TO VOTE ON IT, THE STRIKE WAS QUASI-LEGAL. ALSO AT THIS INFORMAL GATHERING WERE THREE INDIVIDUALS WHO WERE ADAMENTLY

OPPOSED TO ANY SUGGESTION OF IMPROPIETY ON THE PART OF THE UNION OFFICIALS. THESE THREE PEOPLE, NONE OF WHOM ARE UNION OFFICIALS, LABELED THE BALANCE OF OUR LITTLE CONCERNED GROUP "SUBVERSIVE" AND VOWED TO HAVE US ALL BLACK-BALLED. THE MAN PRIMARILY RESPONSIBLE FOR THIS SMALL GATHERING WAS JAMES COLLYER, A LOUISIANA PACIFIC EMPLOYEE AND LOCAL UNION MEMBER. WHILE THIS MEETING WAS UNDERWAY, HE, AND EVERYONE PRESENT, INDICATED WE WERE TRYING TO WORK WITHIN THE FRAMEWORK OF THE UNION. WE WERE NOT ATTEMPTING TO START DECERTIFICATION PROCEEDINGS OR TO UNDERMINE THE LOCAL UNION. THE DAY FOLLOWING THE MEETING, JAMES COLLYER PHONED THE VICE PRESIDENT OF THE LOCAL, JESSIE BELL III, AND ATTEMPTED TO EXPLAIN THIS POSITION AGAIN. MR. BELL STATED TO JAMES COLLYER THAT HE, BELL, DID NOT BELIEVE A WORD OF IT, AND THAT HE SENT SPIES TO OUR MEETING. MR. BELL THEN SAID THAT HE WAS GOING TO BREAK EVERY BONE IN COLLYER'S BODY. IT IS INTERESTING TO NOTE HERE THAT MR. COLLYER IS VERY SMALL IN STATUTE, WHILE MR. BELL IS MODERATELY LARGE. IT IS ALSO INTERESTING TO NOTE THAT ON JULY 16, 1983, THE LOCAL UNION'S BUSINESS REPRESENTATIVE, BURTON BAKER, TOLD JAMES COLLYER THAT JESSIE BELL MAY NOT HARM HIM DURING THE COURSE OF THE STRIKE, BUT WHEN IT WAS OVER, BELL WOULD, INDEED, BREAK EVERY BONE IN JIM'S BODY. THE LOCAL UNION SECRETARY-TREASURER, ELLEN GLEN, WAS PRESENT AT THIS DATE, AND AGREED WHOLE-HEARTEDLY WITH BURTON BAKER. MR. COLLYER SUBSEQUENTLY FILED A COMPLAINT WITH THE NATIONAL LABOR RELATIONS BOARD OVER THIS THREAT OF MR. BELL'S.

ON JULY 9, 1983, A SPECIAL UNION MEETING WAS HELD TO INFORM THE MEMBERSHIP OF THE L.P.I.W'S POSITION AND ACTIONS THUS FAR IN THE STRIKE. AT THIS MEETING, ALL OF OUR LOCAL OFFICERS WERE PRESENT. THEY INCLUDE DON SAPPINGTON, PRESIDENT OF LOCAL #3171; JESSIE BELL III, VICE PRESIDENT OF #3171; ELLEN GLEN, SECRETARY-TREASURER OF #3171; AND BURTON BAKER, BUSINESS REPRESENTATIVE TO THE WESTERN COUNCIL OF THE L.P.I.W. ALSO PRESENT WERE MR. BILLY BROTHERS, EXECUTIVE SECRETARY INLAND EMPIRE DISTRICT COUNCIL, AND MR. JAY PERRIZO, PORTLAND COAST-COLUMBIA DISTRICT COUNCIL EXECUTIVE SECRETARY.

MR. PERRIZO DID MOST OF THE SPEAKING AT THIS MEETING. HE INFORMED US THAT AT LEAST SIXTEEN MILLS OF LOUISIANA PACIFIC'S WERE SHUT DOWN, WITH MORE THAN 1,600 MEN IDLED BY THE STRIKE. THESE MILLS ARE SCATTERED THROUGHOUT NORTHERN CALIFORNIA, OREGON, WASHINGTON, IDAHO. LATER THE STRIKE WOULD EVENTUALLY INCLUDE MONTANA. HE STATED THAT HE WAS ON THE NEGOTIATING TEAM AND THAT LOUISIANA PACIFIC'S CONTRACT PROPOSAL "STUNK". HE STATED IT WOULD TAKE TWO HOURS TO READ THE NEW CONTRACT PROPOSAL TO US AND THAT HE WOULD NOT WASTE OUR TIME DOING THAT. IT IS WORTHY TO NOTE HERE THAT ON AUGUST 4, 1983, LOUISIANA PACIFIC SENT A COPY OF THE NEW PROPOSAL TO EVERY UNION MEMBER. IT TOOK ME LESS THAN 30 MINUTES TO READ IT IN ITS ENTIRETY.

AFTER SOME ADDITIONAL RHETORIC, MR. PERRIZO OPENED THE FLOOR TO QUESTIONS. A MEMBER ASKED MR. PERRIZO WHAT WE COULD DO ABOUT THE SCABS THE COMPANY HAD WORKING AND WHAT TO DO ABOUT THE GYPO LOG TRUCK DRIVERS (INDEPENDENTS) HAULING OUT CEDAR LOGS FROM THE LOG YARD. (LOUISIANA PACIFIC DOES NOT PROCESS CEDAR AT MOYIE SPRINGS. IT IS SOLD TO PRIVATE CEDAR MILLS IN THE AREA.) MR. PERRIZO SAID THAT THE SCABS DID NOT WORK AT THE PLANT SITE 24 HOURS A DAY, AND THAT THE TRUCK DRIVERS WERE NOT ON LOUISIANA PACIFIC'S PROPERTY ALL THE TIME EITHER. SOMEONE ELSE ASKED MR. PERRIZO WHAT HE MEANT, AND HE SAID, "I CAN'T TELL YOU WHAT TO DO, BUT YOU CAN USE YOUR IMAGINATION." THIS COMMENT WAS DELIVERED WITH A WIDE SMILE BY MR. PERRIZO AND MUCH AFFIRMATIVE NODDING AND SMILING ON THE PART OF MR. BILLY BROTHERS. MR. PERRIZO THEN WENT ON TO EXPLAIN HOW A LUMBER TRUCK IN NORTHERN CALIFORNIA HAD "MYSTERIOUSLY HAD ITS WINDOWS FALL OUT IN LITTLE PIECES" AND "ITS TIRES WENT FLAT DUE TO HOLES," AND "ONE DATE IT EVEN CAUGHT ON FIRE AND BURNED UP". "USE YOUR IMAGINATION".

ONE MEMBER THEN STATED THAT SOME OF THESE LOG TRUCK DRIVERS WERE OUR FRIENDS AND RELATIVES. MR. PERRIZO THEN SAID, "IF THEY'RE NOT ON OUR SIDE, THEN THEY'RE NOT OUR FRIENDS." SOMEONE THEN STATED THAT WE COULD GET INTO TROUBLE WITH THE LAW. MR. PERRIZO COMMENTED, "WELL, LOOK AT ME.

I'VE BEEN IN JAIL. THERE'S NO MARKS ON ME. IT DIDN'T HURT." AGAIN, MUCH AFFIRMATIVE NODDING AND SMILING BY MR. BILLY BROTHERS. MR. PERRIZO MADE A COMMENT ON HOW THE UNION HAS GOOD LAWYERS, AND ONCE AGAIN STATED, "I CAN'T TELL YOU WHAT TO DO, BUT YOU CAN SURE USE YOUR IMAGINATION." AT THIS, THE UNION HALL, IN MY ESTIMATION, TURNED INTO PANDEMONIUM. COMMENTS WERE MADE SUCH AS "YEAH, WE'LL GET THOSE BASTARDS", AND "LET'S GET OUT BATS AND GET 'EM RIGHT NOW". THIS WAS ACCOMPANIED BY MUCH FOOT STOMPING AND YELLING. IT WAS AFTER THIS MEETING THAT THE VIOLENCE REALLY BEGAN.

ON JULY 11, 1983, LOG TRUCKS HAULING CEDAR OUT OF LOUISIANA PACIFIC'S LOG YARD STARTED EXPERIENCING FLAT TIRES DUE TO "COFFEE CAN LID" DEVICES. THESE ARE THE PLASTIC PORTION OF A COFFEE CAN LID FILLED FULL OF 16 PENNY NAILS, THEN HID UNDER DIRT, ROCKS, OR BARK. A TRUCK'S TIRES WERE FLATTENED, A TIRE REPAIR PICK-UP TRUCK FROM TOWN HAD IT'S TIRE FLATTENED, AND A SHERIFF'S PATROL CAR HAD A TIRE FLATTENED, ALL ON JULY 11, 1983.

OVER THE NEXT SEVERAL DAYS, NUMEROUS TRAFFIC CITATIONS AND/ OR ARRESTS WERE ISSUED TO UNION MEMBERS, BOTH OFFICERS OF THE LOCAL, AND RANK AND FILE MEMBERS OF LOCAL #3171. TRAFFIC BLOCKADES, PHYSICAL CONTACTS, AND INTIMIDATIONS WERE MADE BY THE UNION MEMBERS AND THEIR WIVES. ALSO AT THIS TIME, FOR SOME REASON THE UNION VACATED THE BUILDING THEY HAD USED FOR YEARS AS A UNION HALL. THE BUILDING IS OWNED BY THE CITY OF MOYIE SPRINGS AND IS THE CITY'S. THE UNION MOVED ITS MEETINGS TO THE MOYIE CLUB, WHICH IS A BAR WITH RESTAURANT FACILITIES. THE BAR IS LOCATED ADJACENT TO THE MILL SITE.

ON JULY 21, 1983, I RETURNED TO WORK AT LOUISIANA PACIFIC AT MOYIE SPRINGS. THIS DECISION WAS BASED ON MANY FACTORS, ONE OF WHICH WAS MY TOTAL DISAGREEMENT WITH THE TACTICS OF THE UNION. UPON ARRIVAL ON THE MILL SITE, I WAS VEHEMENTLY CUSSED AT BY UNION MEMBERS, AND SEVERAL THREATS WERE MADE AGAINST ME. "WE'LL GET YOU, YOU SON-OF-A-BITCH

SCAB" AND "WE KNOW WHERE YOU LIVE, SCAB", WERE AMONG THE COMMENTS I RECEIVED.

THE FOLLOWING DAY, JULY 22, 1983, I WAS RIDING TO WORK WITH MY FATHER-IN-LAW, LYLE COLBY. APPROXIMATELY TWO-TENTHS OF A MILE FROM THE MILL SITE WE WERE ATTACKED BY TEN TO FIFTEEN UNION MEMBERS. JESSIE BELL III, LOCAL #3171'S VICE PRESIDENT, WAS AT THE FOREFRONT OF THIS GROUP. AS WE PASSED BY THIS GROUP, WE WERE PELTED WITH EGGS, SOME OF WHICH STRUCK OUR VEHICLE AND ALSO THOSE OF A COMPANY PICK-UP THAT WAS FOLLOWING US. I OBSERVED MR. BELL THROW THE FIRST EGG, AND HE CONTINUED TO THROW UNTIL WE WERE OUT OF HIS RANGE. WE WERE ALSO VERBALLY THREATENED AT THIS TIME. THE SITUATION WAS FRIGHTENING, AS THEY HAD PEOPLE STATIONED IN THE BRUSH APPROXIMATELY 100 TO 150 YARDS ALONG THE ROADWAY. HAD WE STOPPED, I'M POSITIVE WE WOULD HAVE BEEN BEATEN.

ON THE AFTERNOON OF JULY 22, 1983, A NEW HIREE OF LOUISIANA PACIFIC, TOM FODGE, JR., SUFFERED MINOR FACIAL INJURIES FROM A ROCK THROWN AT HIS VEHICLE AS HE PASSED BY A LARGE GROUP OF UNION MEMBERS GATHERED IN FRONT OF THE MOYIE CLUB. THE ROCK PASSED THROUGH THE RIGHT SIDE WINDOW OF THE FODGE VEHICLE, AND GLASS WAS STREWN ON FODGE, WITH THE ROCK STRIKING HIM IN THE FACE. A WITNESS TO THIS INCIDENT TOLD ME LATER THAT IT APPEARED TO BE LIKE A WAR ZONE WHEN FODGE WENT BY THIS GROUP, AS SO MANY ROCKS WERE AIRBORNE AT HIM. THAT EVENING, A LOG TRUCK OWNED BY SAM FODGE, A BROTHER TO TOM FODGE, JR., WAS STRUCK BY THREE ROUNDS FROM A SHOTGUN WHILE THE TRUCK WAS PARKED IN THE OWNERS DRIVEWAY. DAMAGE WAS TO THE RIGHT DOOR AND WINDOW OF THE TRUCK.

OVER THE WEEKEND OF JULY 23 AND 24, 1983, I KEPT MY FAMILY HOME, NOT ALLOWING THE CHILDREN OUTSIDE. THIS IS WHEN THE PHONE CALLS LATE AT NIGHT STARTED. THEY USUALLY OCCURRED BETWEEN 10:00 P.M. AND 1:00 A.M., AT WHICH TIME I WOULD REMOVE THE PHONE FROM THE HOOK. NORMALLY THE CALLER

WOULD NOT SAY ANYTHING, ALTHOUGH ONCE THE CALLER ASKED "IS THIS SCAB COUNTRY?" AND ANOTHER TIME THE CALLER ASKED "IS THIS ASHBY?". I MIGHT ADD THAT THESE CALLS HAD BEEN PLACED TO MY WIFE DURING THE DAY WHILE I WAS AT WORK FROM THE FIRST DAY THAT I WENT BACK TO WORK. THESE CALLS CONTINUED FOR THE BETTER PART OF A MONTH, WELL INTO LATE AUGUST, AND CAME WITH GREAT REGULARITY.

ON THE NIGHT OF JULY 26, 1983, A NEW HIREE OF LOUISIANA PACIFIC'S, KAREN CARTWRIGHT. HAD ALL OF THE TIRES AND THE VINYL ROOF OF HER VEHICLE SLASHED.

DURING THE SECOND WEEK OF MY RETURN TO WORK, I WAS RIDING TO AND FROM WORK WITH A SALARIED, NON-UNION EMPLOYEE OF LOUISIANA PACIFIC. ONE AFTERNOON, AS I WAS WALKING MY DRIVEWAY, I FOUND THREE TO FIVE POUNDS OF ROOFING NAILS STREWN ACROSS THE DRIVEWAY. THE NEXT MORNING, MY RIDE WAS COMING INTO THE HOUSE TO PICK ME UP, HE ACQUIRED FIVE NAILS IN HIS FRONT TIRE FROM A "COFFEE CAN LID" DEVICE. UPON ARRIVAL AT WORK, I PHONED MY NEIGHBOR, NEAR WHOSE DRIVEWAY THIS DEVICE WAS PLACED, AND ADVISED HIM OF THE SITUATION. HE IMMEDIATELY CHECKED THE DRIVEWAY, AND DISCOVERED THREE MORE OF THE COFFEE CAN LID DEVICES, ALL PARTIALLY BURIED IN THE GRAVEL.

BY AUGUST 1, 1983, LOUISIANA PACIFIC HAD OBTAINED A TEMPORARY RESTRAINING ORDER AGAINST THE UNION FROM THE LOCAL COURTS. ON THAT MORNING, THE UNION STAGED A MASS PICKETING DEMONSTRATION, IN VIOLATION OF THE T.R.O., WITH DON SAPPINGTON, PRESIDENT OF LOCAL #3171 AT THE FOREFRONT OF THE PICKETING.

DURING THE MORNING OF AUGUST 2, 1983, I WAS STANDING IN FRONT OF A SHOP BUILDING OF LOUISIANA PACIFIC'S. AS I WAS STANDING THERE A 3/4 INCH LUG NUT WHISTLED BY MY EAR AND SLAMMED INTO THE BUILDING. THIS WAS FOLLOWED BY ROCKS, MARBLES AND STEEL BALL BEARINGS. THESE ITEMS HAD TO HAVE BEEN FIRED WITH A "WRIST ROCKET", A TYPE OF SOPHISTICATED SLING SHOT. THESE WEAPONS PROPEL OBJECTS WITH GREAT VELOCITY. THERE WERE ONLY TWO UNION MEMBERS PRESENT ON THE PICKET LINE AT THIS TIME: TERRY JOHNSON AND RON STARR.

THAT AFTERNOON, A NON-STRIKING UNION MEMBER, WAYNE CARLSON, WAS SHOT AT BY TERRY JOHNSON WITH A BEE-BEE GUN, WITH THE ROUND STRIKING THE LEFT FRONT DOOR OF CARLSON'S VEHICLE.

ON AUGUST 4, 1983, THE UNION VICE PRESIDENT, JESSIE BELL III, WAS CHARGED WITH A FELONY COUNT OF ASSAULT. MR. BELL WAS ACCUSED OF FIRING A FLARE GUN AT AN L.P. SECURITY OFFICER. THIS INCIDENT TOOK PLACE ON COMPANY GROUND. MR. BELL STATED TO THE NEWS MEDIA THAT HE DID DRAW HIS SIDE ARM, A 357 MAGNUM, DURING THIS INCIDENT AND THREATENED TO SHOOT THE GUARD DOG THE SECURITY GUARD HAD. HE ALSO MADE THE COMMENT TO THE PRESS, "THIS IS GUN COUNTRY UP HERE". HE WAS RELEASED ON A $2,000.00 BOND, AND HIS TRIAL IS PENDING OVER THIS INCIDENT.

ON AUGUST 5, 1983, THE FOLLOWING INCIDENT TOOK PLACE. AT APPROXIMATELY 5:45 A.M., DAVID THOMAS, A NON-STRIKING UNION MEMBER, AND I, WERE WATCHING TWO NON-STRIKING UNION MEMBERS MAKING THEIR WAY INTO THE PLANT FOR THEIR FIRST DAY OF WORK SINCE THE STRIKE BEGAN. THEIR NAMES ARE TOM CLAIRMONT AND DICK FUNKHOUSER. AS CLAIRMONT AND FUNKHOUSER APPROACHED DAVE AND I, I TOLD TOM TO GO BACK TO THE PARKING LOT AND BRING HIS VEHICLE ONTO COMPANY GROUND. I FELT THAT IT WOULD BE DAMAGED IF LEFT NEAR THE PICKETERS. AS CLAIRMONT AND FUNKHOUSER RETURNED TO CLAIRMONT'S VEHICLE, THEY PASSED A GROUP OF STRIKING UNION MEMBERS. THESE PEOPLE WERE RAY WEBB, KERMIT DRAKE AND DON SAPPINGTON, PRESIDENT OF LOCAL #3171. AS THEY WENT BY THIS GROUP, RAY WEBB ASKED IF THEY "KNEW WHAT THEY WERE DOING", AND THAT "THE UNION HAS A LONG MEMORY". AS CLAIRMONT STARTED ACROSS THE PICKET LINE, THOMAS AND I SAW DON SAPPINGTON PICK UP A ROCK AND THROW IT WITH A GREAT DEAL OF FORCE. THE ROCK STRUCK THE LEFT DOOR OF CLAIRMONT'S PICK-UP, DENTING THE DOOR.

ON AUGUST 10, 1983, THE COURT LIFTED THE T.R.O. THAT NIGHT, THE VIOLENCE REACHED NEW HEIGHTS. A NON-STRIKING UNION MEMBER, STEVEN ECONOMU, HAD ALL THE TIRES SLASHED AND ALL BUT ONE WINDOW BROKEN OUT ON HIS VEHICLE WHILE THAT VEHICLE WAS PARKED IN HIS DRIVEWAY, NEXT TO HIS HOUSE. TWO

PEOPLE WERE SEEN RUNNING AWAY FROM THE SCENE OF THIS VANDALISM. A RAILROAD CHIP CAR ON THE MILLSIDE WAS SET ON FIRE WITH A MOLATOV COCKTAIL DEVICE, AND ANOTHER CHIP CAR WAS DERAILED. AS FIREFIGHTERS ATTEMPTED TO EXTINGUISH THE BLAZE, THEY WERE PELTED WITH ROCKS, SEVERAL OF WHICH STRUCK THE FIREFIGHTERS. ONE OF THE FIREFIGHTERS WAS CHRIS PAULSON, L.P.'S PLANT MANAGER, AND HE WAS STRUCK WITH A ROCK. MR. PAULSON STATED THAT UNION MEMBERS WERE NEAR THE FIRE SITE, AND ONE OF THESE WAS JESSIE BELL III, VICE PRESIDENT OF THE LOCAL. WINDOWS OF THE COMPANY'S OFFICE BUILDING WERE BROKEN OUT, LOCAL POLICE CARS AT THE MILL SITE WERE PELTED WITH ROCKS, STREET LIGHTS AROUND THE SITE WERE SHOT OUT, AND GRAFFITI WAS PAINTED ON THE COMPANY'S BUILDINGS.

THE FOLLOWING MORNING, AUGUST 11, 1983, I WAS RIDING TO WORK WITH DAVE THOMAS IN HIS PICK-UP TRUCK. AS WE APPROACHED THE MILL'S MAIN ENTRANCE, WE NOTED A LARGE GROUP OF UNION PICKETERS GATHERED THERE. I MADE THE COMMENT TO THOMAS THAT WE WERE IN TROUBLE NOW. AS WE APPROACHED THIS GROUP, THEY BEGAN THROWING ROCKS AT US. THE AIR WAS LITERALLY FULL OF ROCKS AS WE APPROACHED AND PASSED BY THEM. SEVERAL OF THESE ROCKS STRUCK THE PICK-UP, ONE OF WHICH BROKE OUT THE LEFT SIDE WINDOW, STREWING BROKEN GLASS ACROSS DAVE'S FACE AND LAP, WITH THE ROCK COMING TO REST ON MY SIDE OF THE PICK-UP. THE PEOPLE I SAW THROWING ROCKS WERE DON SAPPINGTON, PRESIDENT OF THE LOCAL, JEFF SCHAUBLE, THE EX-VICE PRESIDENT OF THE LOCAL, LES POSTON, SR. A MAN IN HIS LATE 50'S, MIKE DROPTINY, LLOYD FUNDERBERG, AND JERRY PAVIA. AS WE CONTINUED INTO THE PLANT, MORE ROCKS WERE THROWN AT US AND THEY COULD BE HEARD HITTING THE PICK-UP'S BODY AND FENDERS.

AFTER PARKING THE PICK-UP INSIDE THE PLANT COMPLEX, THOMAS AND I MADE OUR WAY TO THE SECURITY GUARD'S STATION. WHILE THERE, I SAW DICK FUNKHOUSER COMING INTO THE PLANT VIA THE WEST ENTRANCE. THIS ENTRANCE DID NOT HAVE ANY UNION PICKETERS THERE, BUT NEVERTHELESS, I CALLED FUNKHOUSER ON THE C.B. RADIO AND ADVISED HIM TO HURRY AND GET BEHIND SOME BUILDINGS. THOMAS AND I THEN CONTINUED ONTO THE COMPANY'S

OFFICE BUILDING. THE INSIDE OF THE OFFICE WAS IN SHAMBLES, WITH BROKEN GLASS, ROCKS, MARBLES AND STEEL BALL BEARINGS EVERYWHERE. NOT ONE WINDOW FACING THE PICKETING AREA WAS SPARED. THE EXTERIOR OF THE BUILDING WAS COVERED BY GRAFFITI, INCLUDING A LARGE SWASTIKA PAINTED ON THE MAIN FRONT ENTRANCE TO THE OFFICE. BOB BLANFORD, L.P.'S RESOURCE MANAGER, RELATED TO ME THAT JUST PRIOR TO ARRIVAL AT THE PLANT SITE BY THOMAS AND I, HE HAD BEEN PELTED WITH ROCKS AS HE CROSSED THE PICKET LINE, AND HAD BEEN CALLED OUT TO FIGHT AS HE ENTERED THE OFFICE BUILDING.

I STEPPED OUT ONTO THE PORCH OF THE OFFICE AND WAS IMMEDIATELY CHALLENGED TO "COME OUT AND FIGHT YA YELLER COCK-SUCKER". AT THIS TIME I SAW ANOTHER NON-STRIKING UNION MEMBER, ROY COPELAND, ENTERING THE PLANT SITE. AS COPELAND PASSED BY THE PICKETERS, ROCKS WERE THROWN AT HIM. I COULD SEE THE ROCKS BEING THROWN, AND DID SEE THOSE ROCKS STRIKE COPELAND'S PICK-UP. COPELAND PANICKED AND COULD NOT GET HIS PICK-UP SHIFTED INTO LOWER GEAR, CONSEQUENTLY LEAVING HIM IN RANGE OF THE ROCK THROWERS LONGER THAN NECESSARY. I SAW ONE ROCK STRIKE THE REAR WINDOW OF COPELAND'S VEHICLE, BREAKING THE SAME. COPELAND FINALLY MANAGED TO GET OUT OF THE RANGE OF THE ROCK THROWERS. IT WAS AT THIS TIME THAT I NOTED THE PICKETERS PLACING PLANKS ACROSS THE ENTRANCE WAY TO THE PLANT. AS I WATCHED, JAMES COLLYER, ANOTHER NON-STRIKING UNION MEMBER, ARRIVED ON THE SCENE DRIVING HIS JEEP FOUR WHEEL DRIVE. AS HE APPROACHED THE ENTRANCE, HE WAS SLOWED AND STOPPED BY THE PLANKS. HE WAS IMMEDIATELY PELTED WITH ROCKS FROM THE PICKETERS, SEVERAL OF WHICH I COULD SEE AND HEAR STRIKE HIS VEHICLE. SHORTLY AFTER COLLYER'S ARRIVAL AT THE PLANT SITE, THE LOCAL LAW ENFORCEMENT PEOPLE ARRIVED ON THE SCENE AND THE ROCK THROWING CEASED. I WOULD LIKE TO NOTE HERE THAT DURING THE AFOREMENTIONED ROCK THROWING EPISODES, ALL THE UNION MEMBERS WHO WERE THROWING WERE THROWING WITH AS MUCH FORCE AS EACH COULD MUSTER. THE INTENT TO DO PHYSICAL DAMAGE WAS VERY EVIDENT.

ON AUGUST 15, 1983, A NEW RESTRAINING ORDER WAS ISSUED.

ON THE NIGHT OF AUGUST 16, 1983, A VERY SERIOUS ACT OF VANDALISM OCCURRED. AT APPROXIMATELY 9:50 P.M., ALL OF THE ELECTRICAL POWER WAS LOST TO THE CITY OF MOYIE SPRINGS, INCLUDING THE PLANT SITE ITSELF. A MAIN POWER POLE LOCATED SLIGHTLY NORTHWEST OF THE MILL SITE HAD BEEN SABOTAGED. THE GUY WIRES HAD BEEN CUT IN HALF AND THE POLE SAWED OFF AT GROUND LEVEL, ALLOWING THE POLE TO DROP OVER A STEEP BANK. I MIGHT ADD THAT MY HOUSE LOST POWER AT THIS TIME ALSO, AS WE LIVE WITHIN ONE MILE OF THE MILL SITE. THIS WAS A NIGHT OF TERROR FOR MY FAMILY. WE COULD HEAR POLICE SIRENS BLARING AND COULD HEAR POLICE RADIOS BROADCASTING THROUGH THE USE OF THEIR EXTERNAL SPEAKERS. WE SAT IN TOTAL DARKNESS. STEVE ECONOMU, WHO LIVES IN MOYIE SPRINGS, CALLED US AND INFORMED US WHAT HAD TAKEN PLACE, AND THIS ADDED TO THE TERROR. NO SLEEP WAS HAD BY MY HOUSEHOLD THAT NIGHT. DUE TO THIS ACT OF SABOTAGE, THE MILL SITE WAS WITHOUT POWER FOR APPROXIMATELY TWO AND ONE-HALF DAYS. PARTS OF BONNERS FERRY, A TOWN TEN MILES AWAY, LOST POWER FOR A TIME. BONNERS FERRY OWNS THAT POWER SYSTEM, AND THE COST OF REPAIR WAS IN THE NEIGHBORHOOD OF $15,000. THE CITY OF MOYIE SPINGS WAS WITHOUT POWER FOR APPROXIMATELY 18 HOURS. THERE WAS NO DRINKING WATER FOR ITS RESIDENTS, AS THE CITY'S WATER SUPPLY IS OPERATED BY ELECTRIC PUMPS. THERE WAS NO WATER FOR FIRE PROTECTION, AND NO ELECTRICITY TO PROVIDE AIR CONDITIONING FOR THE TOWN'S MANY ELDERLY RESIDENTS. THE CITY'S SEWER SYSTEM WAS INOPERABLE BECAUSE OF LACK OF POWER TO THE CITY'S HOLDING LAGOON. ALL IN ALL, THIS ACT OF SABOTAGE CAUSED A VERY SERIOUS SET OF CIRCUMSTANCES FOR THE RESIDENTS OF MOYIE SPRINGS, TO SAY NOTHING OF THE LOSS OF TWO AND ONE-HALF DAYS OF PRODUCTION FOR LOUISIANA PACIFIC. TO DATE, NO ARRESTS HAVE BEEN MADE IN THIS INCIDENT, ALTHOUGH THERE IS A $10,000 REWARD OFFERED FOR INFORMATION LEADING TO THE ARREST AND CONVICTION OF THE PERPETRATOR(S).

ON APPROXIMATELY THE SECOND WEEKEND OF AUGUST, MY FAMILY AND I WERE SHOPPING AT A LOCAL SUPERMARKET. WE NOTICED THE WIFE OF BURTON BAKER, BUSINESS REPRESENTATIVE TO THE WESTERN

COUNCIL FROM THIS LOCAL, WAS FOLLOWING US THROUGH THE STORE. SHE WAS NOT SHOPPING, JUST FOLLOWING AND WATCHING US. WHEN WE EXITED THE STORE, SHE STOOD BY OUR CAR AND WATCHED US LOAD OUR GROCERIES INTO THE CAR. WE THEN NOTICED BURTON BAKER, DON SAPPINGTON, JESSIE BELL, AND JEFF SCHAUBLE IN THE STORE'S PARKING LOT. WE LEFT THE PARKING LOT AND I, WITH THE INTENTION OF AVOIDING THESE PEOPLE, DROVE AROUND THE BLOCK. AS WE APPROACHED A CITY INTERSECTION, WE NOTED THESE AFOREMENTIONED PEOPLE TO BE STANDING ON THE CURB. AS THIS IS A CONTROLLED INTERSECTION, I HAD TO STOP. MY OLDEST DAUGHTER, AGE 9, WAS BADLY FRIGHTENED AND ASKED ME "WHAT ARE THEY GOING TO DO, DADDY?" AS WE HAD NO CHOICE, WE LOCKED THE CAR DOORS AND PROCEEDED ONWARD. AS WE PASSED BY THE GROUP THEY SIMPLY GLARED AT US AND NOTHING MORE, BUT THE FEELING OF INTIMIDATION WAS INTENSE.

ON AUGUST 17, 1983, A NON-STRIKING UNION MEMBER, RON KING, HAD HIS VEHICLE VANDALIZED WHILE IT WAS PARKED IN HIS DRIVEWAY. THE VEHICLE WAS PAINTED AND WINDOWS BROKEN OUT. ALSO, I BELIEVE HIS HOUSE WAS SPRAY PAINTED.

ON AUGUST 22, 1983, THE UNION HELD A "SOLIDARITY DAY" IN WHICH THEY HAD MASSIVE PICKETING AT THE MILL SITE. THESE WERE NOT ONLY UNION MEMBERS THEMSELVES, BUT THEIR WIVES AND CHILDREN AS WELL. I SAW A LARGE GROUP OF THEM AT THE WEST ENTRANCE TO THE PLANT, WHERE THEY CONGREGATED IN A LARGE MASS AND BLOCKED THE ENTRANCE. IT WAS OBVIOUS TO ME THAT THEY WERE NOT GOING TO ALLOW PASSAGE OF ANY VEHICLE THROUGH THAT ENTRANCE. A GREAT DEAL OF SHOUTING AND OBSCENE GESTURES WERE THROWN MY WAY.

ON AUGUST 31, 1983, A COMPANY SECURITY GUARD, BILL GUICE, SAW A UNION MEMBER, MAGNUS SCHWALICH, USE A WRIST ROCKET AND A ROCK TO BREAK OUT A WINDOW OF THE COMPANY'S OFFICE BUILDING. MR. SCHWALICH WAS SUBSEQUENTLY ARRESTED AND ADMITTED IN COURT THAT HE DID THAT ACT.

ON THE NIGHT OF SEPTEMBER 3, 1983, A VERY SERIOUS INCIDENT OCCURED AT THE MILL. A BOMBLIKE ARTILLERY DEVICE EXPLODED ON THE PLANT SITE. PRIOR TO THIS, TIRE-PUNCTURING

DEVICES WERE THROWN IN THE AREA. THE DEVICES EXPLODED AND STAPLES WERE SCATTERED OVER A LARGE AREA. HAD ANYONE BEEN NEAR THE DEVICE WHEN IT EXPLODED, THEY UNDOUBTEDLY WOULD HAVE BEEN INJURED, OR KILLED. AS IT WAS, A COMPANY PICK-UP SUFFERED A FLAT TIRE FROM THE TIRE-PUNCTURING DEVICES WHEN IT CAME INTO THE AREA TO INVESTIGATE.

ON SEPTEMBER 22, 1983, BURTON BAKER, A UNION MEMBER, STATED THAT THINGS ARE GOING TO GET A LOT HOTTER.

ON THAT SAME NIGHT, SHOTS RANG OUT OVER THE MILL SITE. THREE HIGH CALIBER RIFLE ROUNDS (30 CALIBER OR POSSIBLY HIGHER) STRUCK THE LOG STACKER WHICH WAS PARKED NEXT TO THE SHOP BUILDING. ONE ROUND KNOCKED A HOLE IN THE ENGINE BLOCK, WHILE TWO OTHERS PUNCHED HOLES IN VARIOUS METAL PARTS OF THE MACHINE. ALSO, ONE ROUND ENTERED THE TOP OF THE SHOP BUILDING. IT SHOULD BE POINTED OUT HERE THAT THE SECOND SHIFT WAS WORKING AT THIS TIME. IF THE ROUNDS HAD MISSED THE LOG STACKER, THEY WOULD HAVE ENTERED A BUILDING WHERE APPROXIMATELY TEN PEOPLE WERE WORKING. A FEW MOMENTS AFTER THE SHOOTING OF THE LOG STACKER, A CHIP TRUCK WAS FIRED UPON WHILE IT TRAVELLED DOWN AN INTERSTATE HIGHWAY. THIS TRUCK WAS CARRYING WOOD CHIPS AND HAD JUST LEFT THE L.P. PLANT SITE. THE TRUCK DRIVER TENATIVELY INDENTIFIED THE VEHICLE THAT PASSED HIM AND FROM WHICH THE SHOTS CAME, AS A YELLOW PLYMOUTH DUSTER WITH DISTINCTIVE BLACK MARKINGS ON IT. ONE PERSON IN BOUNDARY COUNTY THAT HAS SUCH A VEHICLE IS A UNION MEMBER. I RECEIVED THIS INFORMATION FROM BILL GUICE, A SECURITY OFFICER OF L.P.

ALSO BURTON BAKER, A UNION MEMBER, HAS BEEN OBSERVED AROUND THE COUNTY FOR THE PAST ONE AND ONE-HALF MONTHS CARRYING A .44 CALIBER PISTOL STRAPPED TO HIS SIDE. HE CARRIES THIS EVERYWHERE--INTO BUSINESSES, PUBLIC BUILDINGS, ETC.

ON THAT SAME EVENING THAT THE TRUCK WAS SHOT AT, DEPUTY RICHARD MARTIN OF THE BOUNDARY COUNTY SHERIFF'S OFFICE WAS ASSAULTED BY JESSIE BELL III. BELL ATTEMPTED TO RUN OVER DEPUTY MARTIN WITH HIS VEHICLE. BELL WAS LATER CHARGED WITH

AGGREVATED ASSAULT AND RELEASED ON A $10,000.00 BOND. IT IS INTERESTING TO NOTE HERE THAT BELL WAS OUT ON BOND WITHIN 44 MINUTES OF HIS ARREST, AND THAT HE STATED TO THE JAILERS THAT THE WESTERN COUNCIL HAD PROVIDED BAIL FOR HIM.

ON SEPTEMBER 24, 1983, JESSIE BELL ATTEMPTED TO RUN ME OFF THE ROAD WITH HIS VEHICLE BY SWERVING INTO MY LANE OF TRAFFIC. ONLY BY DRIVING IN THE DITCH WAS I ABLE TO AVOID A COLLISION WITH MR. BELL.

AS I WAS OPERATING L.P.'S LOG STACKER ON SEPTEMBER 30, 1983, A ROCK WAS THROWN AT ME BY FRANCIS JONES, A STRIKING UNION MEMBER. THE ROCK WAS THROWN WITH SUCH FORCE THAT WHEN IT STRUCK A METAL PART OF THE MACHINE IT SHATTERED THE ROCK. BILLY BROTHERS, EXECUTIVE SECRETARY OF THE INLAND EMPIRE DISTRICT COUNCIL, WAS PRESENT ON THE PICKET LINE, APPROXIMATELY TEN FEET AWAY FROM JONES, WHEN THE ROCK WAS THROWN. BROTHERS MADE NO VISIBLE ATTEMPT TO RESTRAIN JONES FROM THROWING THE ROCK. THIS ROCK VERY NARROWLY MISSED THE GLASS ENCLOSED OPERATOR'S STATION OF THIS MACHINE. CHRIS PAULSON, PLANT MANAGER, WITNESSED THIS INCIDENT FROM THE OFFICE BUILDING.

ON OCTOBER 13, 1983, AT APPROXIMATELY 9:00 A.M. I LEARNED OF THE POSSIBILITY OF MY APPEARING BEFORE THE SENATE JUDICIARY COMMITTEE. AT ABOUT 10:00 A.M., I WAS INFORMED THAT UNION MEMBERS HAD SINGLED OUT FIVE PEOPLE TO GET, AND THAT I WAS FIRST ON THE LIST. AT APPROXIMATELY 12:05 P.M. THIS SAME DAY, WHILE I WAS WORKING, I RECEIVED A DEATH THREAT OVER THE C.B. RADIO IN THE MACHINE I OPERATE. THE CALLER INDICATED THAT I WAS TO STOP BRINGING CHARGES AGAINST THE "BROTHERHOOD" OR I WOULD GET MY "GOD-DAMN HEAD BLOWN OFF, AND THAT'S NO BULL-SHIT". THIS WAS ONE DAY AFTER MY TESTIMONY IN THE STATE COURT ACTION SEEKING A PRELIMINARY INJUNCTION.

IT HAS BEEN MY INTENT THROUGHOUT THIS NARRATIVE TO GIVE AN ACCOUNT OF INCIDENTS THAT I WAS EITHER DIRECTLY INVOLVED WITH OR OF WHICH I SAW THE AFTERMATH. THERE HAVE BEEN MANY INCIDENTS THAT I DID NOT RELATE: THE THROWING OF STAR-SHAPED NAIL DEVICES MANY TIMES ABOUT THE PLANT ENTRANCES;

THE SUGARING OF SEVERAL GAS TANKS; NON-STRIKING UNION MEMBERS BEING FORCED OFF THE ROADWAY BY STRIKING MEMBERS; INTIMIDATING PHONE CALLS TO MY FELLOW WORKERS AND FRIENDS; OBSCENE GESTURES CONSTANTLY; AND INTIMIDATING STARES AND GLARES CONTINUOUSLY.

THE FEARS OF MY FAMILY ARE CONSTANT. I AM AN AVID FISHERMAN AND HUNTER. I HAVE ALWAYS GONE FISHING ONCE A WEEK. SINCE RETURNING TO WORK IN JULY, I HAVE NOT GONE FISHING OR HUNTING ONCE AND HAVE NO INTENTION OF DOING SO UNTIL THIS MATTER IS RESOLVED. I MIGHT NOT MAKE IT HOME FROM A FISHING TRIP. TRIPS OUT OF THE DRIVEWAY ARE PRECLUDED BY WALKING THE DRIVEWAY TO CHECK FOR TIRE PUNCTURING DEVICES. MY FAMILY CAR IS CHECKED FOR TIRE PUNCTURING DEVICES AND GAS TANK TAMPERING PRIOR TO EVERY START UP, INCLUDING AFTER SHORT PERIODS OF TIME IN TOWN. MY FAMILY IS NOT ALLOWED TO GO ANYWHERE WITHOUT ME. THE MAIL BOX IS CHECKED FOR EXPLOSIVES PRIOR TO EACH TIME IT IS OPENED. MY CHILDREN CANNOT WAIT AT THEIR NORMAL BUS STOP ALONG THE ROAD OR RIDE BICYCLES OUT OF THE YARD FOR FEAR OF BEING RUN OFF THE ROAD. IN SHORT, I FEEL WE ARE LIVING IN A SORT OF WAR ZONE WITH LIFE-SAVING PRECAUTIONS THE NORM OF EACH DAY.

MOST, IF NOT ALL, OF THE PRECEEDING INCIDENTS CAN BE DOCUMENTED THROUGH COMPLAINTS FILED WITH THE LOCAL COURTS, NEWSPAPER ACCOUNTS, AFFIDAVITS FILED WITH THE LOCAL COURTS AND THE N.L.R.B., AND BY PHOTOGRAPHS AND TESTIMONY OF LAW ENFORCEMENT PERSONNEL. THE SITUATION IS LUDICROUS, PARTICULARLY WHEN IT IS SO EVIDENT THAT THE VIOLENCE HAS BEEN PERPETRATED AND CONDONED BY TOP UNION OFFICIALS OF THE L.P.I.W.

TO DATE THIRTY-NINE UNION MEMBERS HAVE RETURNED TO THEIR JOBS AT THE L.P. PLANT IN MOYIE SPRINGS.

Senator GRASSLEY. Before you go, Mr. Smith, I would like to say to Dr. Haseler, I understand you are under time constraints. Would you like to leave?

Dr. HASELER. No.

Senator GRASSLEY. Then, I want to thank Mr. Ashby. Sheriff Smith, I think I ought to clarify, and I think I am right on this. You are here not to verify things that Mr. Ashby has told us, but here to testify specifically for the need of Federal help in these instances. Is that correct?

STATEMENT OF SHERIFF RONALD R. SMITH

Mr. SMITH. In my statement, I have some of the incidents he is talking about, and some of the problems that we have in law enforcement to cope with those situations.

Law enforcement is taking a black eye today, and I certainly don't want to defend some of the situations I have heard earlier. I don't think that we have had that much of a problem in our county. We do have a small department. We have myself and five deputies. The city police department has six officers, but no jurisdiction in the county. We have one State highway patrolman who operates in Boundary County.

The first incident that we were called to, our plan was to have several people there, but we had 10,000 gallons of gasoline on the highway, with a traffic accident, that took all of our people.

At the same time, some salaried people were leaving the mill. Union members were trying to force them off the road. It was a situation that we couldn't help them with. We were on the other end of the county.

The only incident that I have heard Mr. Ashby speak of where there was really that much confrontation on the picket line was the morning when Mr. Chris Paulsen, who was the plant manager, informed me that they would be coming in. I think it is like 6 a.m. and for some reason the employees started coming in at 5 a.m. They came in an hour before we had our people out. That was a misunderstanding. That, of course, didn't happen again.

We have had several incidents out there from reckless driving. There was an accident between LP employees and striking union members, harassing telephone calls to members who crossed the picket lines. Damage to property, a logging truck, which had been used to haul logs into the mill was hit by shotgun blasts, at his residence, and a new hire leaving the mill was struck by a rock on the side of the head. LP windows were broke, as he said, and so on. We have had several instances.

This electrical transmission line that was knocked out, they cut the guy wires. We had no water supply, no fire protection. An incident like this, I could have had 50 men out there and we would not have been able to stop it. It took place up in the woods, away from the millsite. I could if I had people in the woods.

Relating to the incidents, just what I mentioned and others, there have been 31 criminal charges filed with the courts, and 14 civil contempt charges relative to violations of restraining orders. The vice president of the local union has been charged with eight criminal charges, of which two are felonies under Idaho State law, and six misdemeanors. He has further been charged with five incidents of contempt of the restraining order. Ten other members have been charged with 23 criminal charges, and 9 instances of criminal contempt.

The plant manager was charged with one charge of assault, which is questionable, but the charge was there made by the local vice president.

None of the criminal charges or the civil contempt charges, to my knowledge, have been brought to trial. This is due to legal maneuvering by the attorneys involved. This number of trials is going to cause a definite backlog in our court system, and it is going to be a tremendous cost to the county.

The above-mentioned incidents could be classified primarily as vandalism without threat to life. However, certain incidents certainly have been life threatening. The shotgunning of a logging truck and residence took place near a bedroom where some small children were sleeping. The gunshots at the trucks hauling wood chips to the mill, especially the one fired through the driver's door, could have had tragic results.

I have picked up drivers said to be carrying firearms of their own now. The shooting of a logroller at the millsite took place near other mill workers. The felling of the power pole was an extremely dangerous act, and would have resulted in injury to private parties had not law enforcement been there almost immediately.

At that particular time, I had gone to the commissioners and also the city council, and they let me hire some reserve officers, and I put them at the millsite 24 hours a day, and I also was able to use one city officer and one police vehicle, and they were able to be out there at the nighttime hours.

So for about a month during this strike, we had people at the millsite 24 hours a day. The State police were a tremendous help to us. I called the Governor's office, and they kept working me down until I got to a lieutenant, and he said if I needed help to call him, and I called him several times.

The cases that I have here probably are about a third. They got to be so routine out there that they couldn't be backed up. The incident would happen; nobody knew who done it.

I would like to comment that in a misdemeanor, before law enforcement can do anything, when the misdemeanor is committed we either have to see it, or we have to have a complaining party. Just the fact that the incident happened and they suspect so and so, we cannot do anything about that. I don't like that, either, but unless we have—we can view it, or we have a witness who is either a victim, or they saw it happen. Then we can do something.

Senator GRASSLEY. Are these video tapes here of help in that way?

Mr. SMITH. Yes; they would. I don't understand the video tape. I don't know why arrests haven't been made, from what I have seen. There were plenty of violations there.

The law enforcement in Boundary County, and I guess that is all over, we are in a kind of a no win position. It has been steadily the claim of the union members that the sheriff's office is favoring LP by escorting workers into and out of the millsite, by having deputies at the mill, and by investigating reports of lawbreaking, which

I never could understand why they objected to us enforcing the law.

On the other hand, the management, the personnel of LP, have been critical that enough arrests have not been made, that the sheriff's office is slow in responding to complaints, that generally enough protection has not been given. I can go along with a lot of that. I would like to be out there more. We have the entire Boundary County to take care of, and we have five people.

With the help of the State police and some from the city, we have been lucky, I guess. During the month of August, when the union and company disturbances were at their highest level, the Boundary County sheriff's office had two major incidents take place. First, there was a double homicide that occurred in the south of Boundary County, with an arrest made within 24 hours. Three residences that were considered to be major drug factories in the county were served with search warrants, resulting in seven arrests, and seizure of a million dollars in marijuana.

All the above incidents where arrests were made taxed the limits of available manpower. Officers became physically tired and emotionally drained, and could have had tragic results, considering the type of incidents that took place.

So far, we have used the State police for 856 hours, and the city police have given us about 170 hours trying to control the situation at the LP millsite.

I brought some items.

Senator Grassley. Will you try to describe it?

Mr. Smith. I am not sure what it is myself. It was placed in the log yard near a log deck so that logging trucks that would come to haul the logs out would pick this up. And it was buried within the bark where it was hard to see.

These items, spider-something, they finally were able to fix them—and I am not sure which is which here now—but they are able to throw it, and regardless of how you throw it, it will sit up where you will pick it up with your tire. It won't land upside down. They have it weighted just right so they will turn over. I guess these have been picked up by the poundful, in 50 gallon drums, there have been so many of them.

I think there are two of these. We have more than this, but I just brought a few.

Senator Grassley. Is that the conclusion?

Mr. Smith. There is more here.

Senator Grassley. Would you have any final statement that you would make?

Mr. Smith. Like I say, I sat over here before, and I would slip down in the seat every time somebody would talk about law enforcement, but I don't think we fall into that category, what I viewed on the tape and the statements I have heard this morning.

I don't feel that we have done as much as we should. I wish I had more people, or more agencies that could help us, but with what we have on hand, we just can't do it. With six people, we can't control the violence that we have had at the millsite.

Senator Grassley. So your point would be—my main point—is that there sometimes is pressure brought to bear, and sometimes local law enforcement people can't do their job, and in your particular case that is not the problem, but it is such a big problem that you don't have the personnel to go through it?

Mr. **Smith**. I don't have any political pressure. I was asked one time when I was going to run for office again, but that doesn't bother me, and it has never had a bearing, since we are a county agency that is an elected position. It has never affected the way we would respond to problems at the mill, and never will.

[Prepared statement and letters follow:]

Boundary County Sheriff

P.O. Box 127
Telephone 208-267-3151 or -3152
Bonners Ferry, Idaho 83805

Ron Smith
Sheriff

Joe B. Allen
Chief Deputy

THIS STATEMENT HAS BEEN PREPARED AND IS BEING PRESENTED BY:

RONALD R. SMITH

Members of the Committee:

Boundary County is the most northern county in the State of Idaho. It forms the international boundary with Canada and is bordered by the state of Montana on the east and the state of Washington on the west. Boundary County has 1,277 square miles which are roughly divided into federal land (58%), state land (21%) and private land (30%. The population of Boundary County is about 8,000. Bonners Ferry, the county seat, has a population of approximately 3,000 people. Smaller communities include Moyie Springs, Naples, Porthill and Eastport. The economy is primarily based on timber, lumber and agriculture.

Boundary County has two Ports of Entry between the U.S. and Canada. The Porthill/Rykart crossing is used primarily by local residents. The Eastport/Kingsgate crossing is a twenty-four Port of Entry and is the major crossing point in and out of the U.S. for traffic moving on highway US#95 between the major Canadian cities of Edmonton, Calgary, Lethbridge and Spokane and Seattle, Washington in the United States. Highway US#95 runs the entire length of Boundary County and is linked with highway US#2 three miles north of the city. Highway US#2 is the primary route for vehicle traffic between Spokane, Washington and major northern Montana cities and for traffic moving into Glacier National Park from the west. These transportation routes are also the major routes for interstate trucking moving between these areas.

The lumber industry makes up one of the county's chief payrolls. There are two corporate sawmills located in the county. Louisiana-Pacific is located at Moyie Springs and W-I Forest Industries is located in Bonners Ferry.

Law enforcement in Boundary County is comprised of the Boundary County Sheriff's Office which has five deputies to assist the Sheriff in carrying out his statutory duties which include criminal investigations, civil processes, investigate complaints, traffic accidents, and jail services for the city and county. The city of Bonners Ferry employs a Chief of Police and five patrolmen. Their duties are primarily traffic control and investigation of complaints within the city limits of Bonners Ferry. There is one Idaho State Police officer who is stationed in Boundary County. His primary responsibility is traffic on the state highways.

On June 26, 1983 the L.P.I.W. 3171 began a strike at the Louisiana-Pacific Lumber Mill at Moyie Springs, Idaho in Boundary County. This strike affected 170 union members. A short time after the strike began, L-P brought salaried employees from out of the area to operate the stud mill operation at the plant. This caused the union members to become upset and acts of harrassment and intimidation began on July 12, 1983.

The first incident of this harrassment and intimidation clearly is indicative of the problems law enforcement in Boundary County has faced during the length of this strike. At the same time that a tanker truck loaded with 10,000 gallons of gasoline had run off the road on highway US#95 and rolled over spilling several thousand gallons of fuel and creating a major hazard requiring the attention of law enforcement personnel in the county, those salaried employees were leaving the L-P mill and were being subjected to potential harm by vehicles trying to run them off the road. The potential for confrontation between union members and L-P employees was extremely high. The Sheriff's Office simply did not, and does not, have the manpower to deal with the situations that have developed due to the strike and still be able to respond to the routine emergencies and complaints in the county.

On the following page is a list of the incidents which have been reported to the Boundary County Sheriff's Office and have resulted in a formal report being taken and an investigation taking place.

7-12 Reckless Driving: Accident between L-P employees and striking union members.
7-12 Harrassing telephone calls to union member who crossed picket line to return to work.
7-23 Injury to Property: Logging truck which had been used to haul logs into mill was hit by four (4) shotgun blasts at the residence of the owner.
7-25 Battery - Injury to Property: A "new hire" was leaving the mill site when he was struck in the side of the head by a rock thrown by a picketer.
7-28 Property Damage: L-P mill office windows broken by rocks and other missiles fired by sling shots.
7-31 Disturbing the Peace: Workers crossing the picket line are harrassed by striking union members.
8-2 Disturbinb the Peace: Workers enroute to to L-P mill are harrassed by striking workers; eggs and rocks thrown at vehicles.
8-2 Injury to Property: Damage to L-P mill office by throwing rocks.

8-5 Aggravated Assault: Union member allegedly fired a flare gun at L-P security personnel.

8-6 Injury to Property: Worker who was crossing the picket line to work had the tires slashed on his vehicle and rock thrown through the window of his residence.

8-11 Injury to Property: Union member who was crossing picket line to work had tires slashed on his vehicle parked at his residence.

8-11 Injury to Property: Windows in L-P office broken by rocks and sling shots.

8-12 Injury to Property: Windows in L-P office broken by rocks.

8-17 Injury to Property: High power electrical transmission line was knocked out by cutting guy wires and sawing down power pole. This caused power outage not only to the l-p mill, but most of the area between Bonners Ferry and Moyie Springs was affected. Water supply to Moyie area was cut off, as was fire protection due to lack of electricity to the pumps. Cost to the city of Bonners Ferry for repair and loss of electricity sales was approximately $15,000.

8-27 Injury to Property: Vehicles at L-P mill had tires flattened by "spider spikes" thrown on the ground arount the entrance to the mill.

8-31 Injury to Property: Windows in L-P mill office broken by slingshots securing personnel had rocks thrown at them while attempting to clean up "spider spikes" thrown on the ground around the mill entrance.

9-4 A bomb exploded mear the front of the mill, near railroad tracks.

9-7 Injury to Property: L-P security personnel had tires flattened by spider spikes thrown in the road.

9-12 Injury to Property: Worker crossing the picket line had sugar put in his gas tank at his residence.

9-16 Injury to Property: Worker had tires flattened and sugar put in the gas tank of his vehicle parked at his residence.

9-23 Assault: A Carlson Brothers Trucking Co. semi hauling chips from the L-P plant was hit by gunfire approximately 1½ miles from the mill.

9-24 Injury to Property: L-P mill-large log loader was hit by high power rifle fire, causing a hole in the engine block.

9-25 Injury to Property: A worker crossing the picket line to work had sugar placed in the gas tank of his vehicle parked at his residence.

9-26 Injury to Property: Large "spike-like" devices found in log yard, placed in fron of log deck where loader would sustain tire damage.

9-26 Aggravated Assault: L-P security personnel were allegedly threatened by striking union workers.

9-30 Assault: L-P worker was hit by rocks thrown by striking workers.

10-14 Injury to Property: A Carlson Brothers Trucking Co. truck was hit by 9 shots fired from a .223 caliber rifle. One bullet hole was in drivers door just below window.

Related to the above incidents there have been 31 criminal charges filed with the court and 14 civil contempt charges filed relative to violations of restraining orders.

The vice-president of the local union has been charged with 8 criminal charges of which 2 are felonies under Idaho State Law and 6 misdemeanors. He has further been charged with 5 incidents of contempt of the restraining order.

Ten other union members have been charged with 23 criminal charges and 9 incidents of criminal contempt.

The Plant Manager at L-P, Moyie Springs, was charged with one count of assault. Two other L-P employees have been charged criminally.

None of these charges, criminal or civil contempt, have been brought to trial, this due to legal manuevering by the attorneys involved. This number of trials has caused a definate backlog in the court sustem of Boundary County and will cause a tremendous cost to be incurred for the processing of these complaints through the judicial system.

The above mentioned incidents could be classified primarily as vandalism without threat to life. However certain incidents certainly have been life threatening. The shotgunning of a logging truck at a residence took place near a bedroom where small children were sleeping. The gunshots into trucks hauling wood chips from the mill, especially one fired into the driver door could have tragic results. Chip truck drivers are said to now be carrying firearms and ready to return gunfire. The shooting of a log loader at the mill site took place near mill workers. The falling of the power pole was an extremely dangerous act that easily could have resulted in injury to private parties had not law enforcement personnel been on the scene almost immediately.

It has been estimated that the above incidents, related to the strike, and in which a formal report was taken would only represent about one-third of the actual incidents. The incidents became so common-place that reports were not made. Many complaints concerning harrassing phone calls, reckless driving and other forms of harrassment and intimidation were never formalized by making a report.

Due to a lack of adequate manpower and equipment the following areas are greatly impacted by strike activities.

1. Normal investigations relative to other criminal complaints are delayed. This reduces greatly the chance of settling these complaints by arrest.
2. Response time by the Sheriff's office relative to the normal activities which are necessary to investigate was slowed.
3. The strike related incidents which required follow up investigation were not adequately dealt with due to:
   a) Lack of manpower to investigate.
   b) Continued necessity to be at the millsite to deter violence and vandalism.
4. Normal patrol duties were curtailed resulting in lower traffic and particularly Driving While Intoxitated citations.

Another impact on the Sheriff's Office is the "no win" position which law enforcement is placed in. It has steadily been a claim of the union that the Sheriff's Office was favoring L-P by escorting workers into and out of the mill site, by having deputies at the mill site continually, and by investigating reports of law breaking.

On the other hand, management personnel at L-P have been critical that enough arrests have not been made, that the Sheriff's Office is slow in responding to complaints, and that generally enough protection has not been given.

For about five weeks after the power pole incident the County Commissioners authorized the use of paid reserve officers to be stationed at the mill site on a twenty-four hour basis. The City of Bonners Ferry authorized the use of one city officer at the mill site during hours of darkness, resulting in approximately 170 hours. Extra Idaho State Police units were sent into the area to assist in curtailing acts of vandalism. Reports of violence and vandalism were greatly reduced during this time, but this operation had to be curtailed due to budget shortfalls. This group contributed 856 hours, minimum.

During the month of August when union/company disturbances were at their highest level the Boundary County Sheriff's Office had two major incidents take place. First a double homicide occurred just south of Bonners Ferry. Second, three residences considered to be major drug traffickers in the county, were served with Search Warrants resulting in seven arrests and seizure of $1,000,000.00 in marijuana. While the above incidents both resulted in arrests being made, they taxed the limits of available manpower to the extreme. Officers became physically tired and emotionally drained which could have had tragic results considering the types of incidents which took place.

STATE OF IDAHO
DEPARTMENT OF LAW ENFORCEMENT

JOHN ROONEY
Director

Idaho State Police
P.O. Box 879, Coeur d'Alene, Idaho 83814

JOHN V. EVANS
Governor

October 18, 1983

Sheriff Ron Smith
Boundary County Sheriff's Office
Bonners Ferry, Idaho 83805

Dear Sheriff Smith:

July 26th through August 23, 1983 was the heaviest period of involvement for the Idaho State Police at the Louisiana Pacific labor dispute at Moyie Springs. During that period, ISP officers expended 824 hours actually engaged in activity in Boundary County due to this problem. Additionally the Investigative Services, Department of Law Enforcement, expended 32 hours.

The men who worked these hours were drawn primarily from this district, however, two men were brought in from another district for three days to give our men a break. During this same time we had many other problems within the district which strained our ability to be effective.

Sincerely,

CALVIN BERNARD, COLONEL
Superintendent
Idaho State Police

R.L. Skinner

R.L. SKINNER, LIEUTENANT
District Commander
Idaho State Police

CB:rls:pr

City of
BONNERS FERRY

Moyle Dam Constructed 1948

TELEPHONE (208) 267-3105
102 MAIN STREET
POST OFFICE BOX 149
BONNERS FERRY, IDAHO 83805

October 20, 1983

Boundary County Sheriff's Office
Boundary County
Bonners Ferry, Idaho 83805

Attn: Mr. Ron Smith
Sheriff

Re: City Power Pole Damage
LP Labor Dispute

Dear Mr. Smith,

You had requested a tabulation of the costs of damage sustained by the City of Bonners Ferry Electric Department, as a result of the power pole being cut down during the on going LP labor dispute. The damage resulted in bringing in an outside contractor as well as our own staff and a total of two (2) days to repair.

The tabulation of the total cost to the City is as follows:

Outside Contractor	Labor	$ 4,649.79
	Equipment	1,375.00
	Material	1,038.81
City Staff	Labor	2,912.75
	Equipment	1,280.00
Loss Power Sales	10,880KWH	348.00
Loss Generation Sales	178,000 KWH	3,382.00
		$14,986.35

The above is the cost of the damage that resulted in the power pole being cut down. Equally significant to the City of Bonners Ferry Electric Department was the threat to life that existed with the power line being cut as well as the lost of power to two public water systems that provide both domestic and fire protection services.

Thank you for your concern of this matter as it affects the entire community health and welfare.

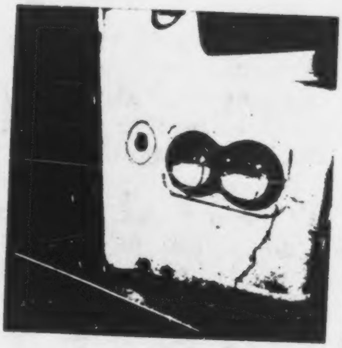
Sincerely,

Richard L. Cook
City Administrator

RLC/ld
cc: Don Hamilton
file (2)

Carlson Bros.

PM OCT 14 1983



PM OCT 14 1983

PM OCT 14 1983

Senator GRASSLEY. Do you have members of your family you would like to introduce?

Mr. SMITH. I have my wife, Evelyn, and then my son, if he is not asleep, Ron.

[Laughter.]

Senator GRASSLEY. We welcome them here, and are glad they are supportive of you to come to help us in this process of legislation.

I will again ask questions for the record, and make the record as complete as possible.

Dr. Haseler, it has already been stated that you have been a long-time member of the Labour Party, and that you have been a founding member of the Social Democratic Party. Was I right in both of those statements?

Dr. HASELER. Yes.

Senator GRASSLEY. Would you say that you are sympathetic with the labor unions and trade union movement?

Dr. HASELER. Yes, I am, and always have been.

Senator GRASSLEY. And the British have a strong trade union movement?

Dr. HASELER. It probably has the strongest trade union movement in the Western World.

Senator GRASSLEY. I had an opportunity to listen to some of the debate that went on in Blackpool. That would have been in September. Even within the labor union movement in Great Britain, there are tremendous differences of view as to how to proceed and even how to have a relationship with the various political parties.

One of the debates there was whether the trade union movement ought to have anything to do with the Conservative government, and very responsible people within the trade union movement were arguing that they should not close the doors to any political party, and it is that sort of responsible union dialogue with political leaders of both parties that I would hope to encourage in this country as well.

I am a conservative Republican, but I have been a member of a labor union. I believe in the labor union movement, but I believe this land of the free ought to remain the land of the free, and not remain the land of the fee, and that is what we are headed for if we don't turn this cart around to have the process of participatory democracy not only here in Washington, but also in collective bargaining agreements, and to have the wishes of the rank and file make policy, and also hold people responsible for violence.

Does Great Britain experience the kind of labor violence that you have described, that you have heard described here this morning?

Dr. HASELER. Certainly not. Over the whole history of the 20th century, I don't think that there is this kind of intimidation and extortion. It is not a factor in the British labor disputes, no.

Senator GRASSLEY. Do labor unions in Great Britain enjoy any exemption from the criminal laws of the country?

Dr. HASELER. No, not from the criminal law, no, no. They have a lot of immunities, more immunities than they have in other areas of the law, but no one is outside the criminal law, not on the kind of issues we have been discussing today, not simply because they are trade unionists.

Senator GRASSLEY. Is exemption from the criminal law necessary in order to have a strong labor movement?

Dr. HASELER. Well, I think as has been proved in Britain, no, I don't believe it is. As I said in my testimony, a trade union is as stong as the support it can gain from its members, and that is when a trade union gains support from its members for legitimate industrial action, it will be a strong union. When it doesn't, it will not.

Senator GRASSLEY. Mr. Ashby. What was the express purpose of the strike that occurred against the Louisiana-Pacific Co. in Idaho, and was that express purpose any different from the actual purpose of the strike?

Mr. ASHBY. Yes, the express purpose, the purpose that was let known to the media and to the membership was a strike over a grievance at that local. The real purpose was to avoid the lack of getting strike pay. The company was struck systemwide by the LPIW over contractual negotiations. Our contract did not expire until the end of July, and we went out in June. We hadn't even gone to the bargaining table.

So, yes, the express purpose and the real purpose were indeed different.

Senator GRASSLEY. There were strikes going on in other locations for the same company?

Mr. ASHBY. Yes, sir; system wide.

Senator GRASSLEY. And you were a member of the union?

Mr. ASHBY. Yes, I was.

Senator GRASSLEY. When did you first experience the use of force or violence or fear directed against you or your property?

Mr. ASHBY. The strike began June 27. That day, I was told not to ever cross the picket line. I would put that as the first time that the use of force, fear, or whatever, was given to me.

Senator GRASSLEY. By whom were these acts committed?

Mr. ASHBY. You mean with regard to the first incident I experienced, or the whole thing?

Senator GRASSLEY. The whole set.

Mr. ASHBY. OK. The first incident that I was involved with was by a union member, not an officer of the union, when I was informed not to ever cross the picket line. The balance of the violent acts that I had seen were either done by a union officer, actually doing the actual damage, or he was standing there watching it going on.

Senator GRASSLEY. What was their purpose in directing, or for their use of violence?

Mr. ASHBY. To achieve their objective, I assume, which was the collective bargaining system, to use the phraseology, to bring Louisiana-Pacific to the bargaining table.

Senator GRASSLEY. At the time that the union official recalled what he had heard in California, and told you to use your imagination, what exactly had happened in California?

Mr. ASHBY. I cannot relate exactly what happened. All I can relate is what he stated to us after the comment of "Use your imagination"—the mysterious burning of a truck, windows breaking out, et cetera.

Senator GRASSLEY. Had any gunshots been fired?

Mr. **Ashby**. Down there?

Senator **Grassley**. Yes.

Mr. **Ashby**. I believe there have, but I have no verification of that.

Senator **Grassley**. Had any explosives been used, or any incendiary devices?

Mr. **Ashby**. Again, I believe so, but I do not have verification of it.

Senator **Grassley**. You already told us about the use of some homemade weapons in regard to Idaho, right?

Mr. **Ashby**. Right.

Senator **Grassley**. Any evidence of anything like that in California?

Mr. **Ashby**. Yes; and in Montana.

Senator **Grassley**. Was that official the same one as identified by the previous witness, Mr. Ford?

Mr. **Ashby**. I don't believe so.

Senator **Grassley**. Was it the same union as identified by him?

Mr. **Ashby**. I believe Mr. Ford is with the IWA, and I am with the LPIW.

Senator **Grassley**. Recalling the acts of violence directed against you personally, did you or anyone else contact the police or other local law enforcement officials?

Mr. **Ashby**. Yes, sir.

Senator **Grassley**. What was the response of the local law enforcement officials?

Mr. **Ashby**. The standard procedure of taking a report. Again, we are back to misdemeanor claims. File a report, contact the prosecuting attorney, and take that route.

Senator **Grassley**. Were any arrests made?

Mr. **Ashby**. On any of my complaints?

Senator **Grassley**. Yes, on your complaints, and then I would ask you on any other complaints.

Mr. **Ashby**. Yes to both questions.

Senator **Grassley**. Were any charges brought?

Mr. **Ashby**. Yes.

Senator **Grassley**. Have any of these people been prosecuted at this time?

Mr. **Ashby**. No.

LIFE THREATENED

Senator **Grassley**. I need to ask one last question. Have any of your—no not one last question—but I want to ask this: Has your life ever been threatened?

Mr. **Ashby**. Yes.

Senator **Grassley**. Has your wife or children experienced any intimidation when you were not with them?

Mr. **Ashby**. Yes.

Senator **Grassley**. Do you believe that as a result of what you have experienced others in your community will be less likely to do what you did and oppose the union in the future?

Mr. **Ashby**. Yes, sir, very definitely.

Senator GRASSLEY. Was the union that you were a member of affiliated with any organization at the time of these incidents?

Mr. ASHBY. The local is part of LPIW, which in turn is part of the United Brotherhood of Carpenters and Joiners, which is affiliated with the AFL-CIO.

Senator GRASSLEY. Is it a member of that organization today?

Mr. ASHBY. I assume so, yes.

Senator GRASSLEY. To your knowledge, has that organization taken any actions to disavow the actions you have testified to?

Mr. ASHBY. I have not seen any.

Senator GRASSLEY. Is the union official who boasted of having been to jail still employed by the union in an official capacity?

Mr. ASHBY. Yes, sir.

Senator GRASSLEY. Then do you conclude that the union has condoned these practices?

Mr. ASHBY. I would take it a step further, sir. I would say perpetrated, by their statements, and by their omission of attempts to cease and desist, because I have actually had rocks thrown at me while the union official stood 10 feet away from the rock thrower and made no attempt to stop him.

Senator GRASSLEY. And would you assume they would have a responsibility as a union leader to do what they can to keep peace on the line?

Mr. ASHBY. That is their rhetoric.

Senator GRASSLEY. Sheriff Smith, I am aware you are here in a different capacity. Are there any things that Mr. Ashby has testified to that you would wish to refute or to clarify?

Mr. SMITH. No. We have had several conversations. The only thing is, when charges are brought, we have no control over when they will be brought to trial, or whether they will even be arrested. Our county attorney makes the decision whether they will be summoned, or whether there will be an arrest warrant issued. We try to have the arrest warrant, but there have been many times that all they will issue is the summons, and that amounts to our civil deputy serving him with a piece of paper telling him when to be in court.

I prefer the arrest route, so that we can book and fingerprint and leave an impression on them.

This union official that was charged eight times, I think it was, the last time that I was there on the arrest with the chief deputy, and while we were booking him into the jail, he was in the process of making bond. As a matter of fact, the bond had been made before we completed booking him. He had to pay a thousand dollars to the bondsman, which I am sure he didn't have, and it had to be up to the union to get him out.

I feel, like I said earlier, I think we have done what we could with what we've had. I wish that I could see somebody at the millsite all the time now. We don't. We just don't have the people. We don't have the resources to get the people to put out there.

We try to respond when we think there is going to be a problem, or when the company thinks there is going to be a problem. I certainly don't condone violence, whether it is union-related or not. Also, I don't speak for management. I don't know their problems, either. However, I do believe that there should be some type pressure put on to resolve these labor disputes before we get into the violence part. I know they both have their sides, but it looks like when there is a meeting set, it is awful easy to cancel it, and that tends to have tempers flare.

Every time we had a restraining order dropped, and why the courts would drop them, it makes no sense to me when they knew what was going to happen when they did drop them. We would always have trouble.

Most of our trouble has been under the cover of darkness from the woods. We know there are rocks being thrown. Some of my colleagues were hit. One of my deputies, the same union vice president tried to run him down with his car. He was in turn arrested for that, for aggravated assault, but he is still on the street, and he hasn't come to court, either.

I think the court system is lacking. Like I say, there have been 31 criminal charges and 15 civil contempts, and the first time I know that I have to appear in court is December for one of these charges.

Senator **Grassley**. You have anticipated several questions I was going to ask you, and I think that you have answered every point of view that I wanted to bring out in the record, so I thank you and the rest of the panel very much. I know that we have taken a long time, and we still have one more panel to go, and I would like to dismiss you now, and invite you to stay, if you desire.

I will call the next panel. The next people I want to have come before us are Mr. Horace Guyton, Jr., of New Jersey, Mr. David Young of Florida, and Mr. Walter Kelley, executive vice president, Montana Power Co., Montana.

STATEMENTS OF HORACE GUYTON, JR., NEW JERSEY; AND DAVID YOUNG, FLORIDA

Mr. **Guyton**. My name is Horace Guyton and I am employed as a janitor for Wheaton Industries in Millville, NJ. The Glass, Pottery, Plastics, and Allied Workers, Local 219, AFL-CIO represents the employees at my plant, including me.

In May 1983, the union went on strike against Wheaton and I chose not to participate because of my family's financial needs and the fact that the employees were not granted the right to vote on whether to strike or not.

Almost immediately after crossing the union's picket line, the abuse began. The initial name calling, scab, nigger, and so on, was to be expected. However, the union went much further. My house was surveillanced; my wife was followed; on a few occasions her picture was taken by an angry striker who then threatened her and my children.

On a number of occasions I was physically threatened when attempting to go to work, once by a striker who brandished a knife and said he was going to get me. Another time I was struck by a brick thrown out of a moving vehicle. The truck had a sign in the back window with the union's name on it. Glass bottles were shattered against the side and front of my home on several occasions, making it dangerous to walk around.

The union published a scab list, which included the names and addresses of employees who had chosen to return to work. This hit list, as it has become known at the plant, was placed on a bulletin board in the union headquarters and distributed to strikers.

In my opinion, it was an invitation to strikers to commit acts of violence on people who crossed the picket line. I know of a number of other nonstriking employees who have also been harassed and terrorized. Out of fear, I moved, only to find out that the union updated the list by providing my new address.

I have been told that my picture and automobile license tag number are also on display at the union headquarters. The strike settled a few weeks ago, but the abuse has not stopped. I am still greeted by racial slurs and have been advised by my acquaintances at the plant that one striker still vows that I and my family are dead regardless of the outcome of the strike.

I believe that this kind of degradation that I have been subject to goes beyond the bounds of human decency; worse yet, bringing my family into the picture has created a climate of fear and paranoia.

I hope that Congress can do something to prevent other families from going through what I have been through. And may I also add that a lot of people seem to look for physical abuse. They feel like why get counseling, why do anything if you do not have a broken arm which will heal or slashes on your face which will heal.

But the mental pressure, you never can tell if that will heal. And to harass me, threaten me is one thing, but to go and harass my family, especially when I am not home 10 to 12 hours a day, 6 and 7 days a week, constantly, is another thing, too.

And something that I have not heard—I do not know if this happened to anybody else where they work—but it seems like the verbal abuse that is aimed at the women is really outrageous. And I have not heard anyone speak of it, but I will say a few things about it.

I talked with ladies I do not know. All I know is they worked at my plant—and with people who have talked with women, too. And they have gotten phone calls of getting killed, having a face lift on the side corner somewhere, telling a pregnant lady she would have an abortion after 8 months, out in the middle of the street.

And they do not care, and, I mean, this is still going on now. And some ladies saying things like they are going to quit working at Wheaton for the simple fact that they cannot send their children to walk to school by their street, even if their school is like four blocks up the street. And it is really out of hand.

And as far as the hit list, I think the one that I have now is the second one that is put out. And my name is posted at the union hall with my new address on it, and I am not the only one. There are quite a few people, and a lot of people will not come as far as I have because they feel like what is the use. There is not a law.

If there is not one by now, there will never be one. But I feel different. You will not get a law—you will not get nothing if you do not try for it.

Senator GRASSLEY. Well, thank you for your courage.

Are you done, then?

Mr. GUYTON. Yes.

[The following material is a "Scab List" or "Hit List" referred to in testimony of Mr. Horace Guyton of New Jersey. This list contained the names and home addresses of nonstriking workers of Wheaton Industries of Milleville, NJ. It was posted at the union hall and distributed to some striking workers.]

MEMBERS IN BAD STANDING (SCARS) Hit list

129. ADAMS, BARBARA-938 MILL RD. VINELAND,N.J.08360
180. ADAMS, KATHERINE-304 W. POWELL ST. MILLVILLE,N.J.08332
221. ADAMS, SABRINA-
191. ANDREWS, PAULEETE-64 VALENTINE RD. BRIDGETON,N.J.08302
37. ASKINS, PHONECIA-50 PORECCA DR. MILLVILLE,N.J.08332

42. BARD, SAUNDRA-R.D.#7 BOX 36 BRIDGETON,N.J.08302
11. BARRICK, DOUG-427 IRELAND AVE. MILLVILLE,N.J.08332
64. BATEMAN, DONALD-7 EDGEWOOD AVE. CEDARVILLE,N.J.08311
73. BAXTER, FRED-5619 LODGE PL. MILLVILLE,N.J.08332
39. BECK, MADELINE-21 CORNWALL AVE. MILLVILLE,N.J.08332
143. BENNETT, PHILLIP JR.-BOX 103 QUAKER ST. PORT ELIZABETH,N.J.08348
222. BENNETT, JOHN-324 S. 3 RD. ST. MILLVILLE,N.J.08332
223. BERSTLER, GEORGE-
81. BINGHAM, DAVE-425 PEACH ST. MILLVILLE,N.J.08332
28. BISCOGLIO, MARGARET-522 CHESTNUT AVE. BRIDGETON,N.J.08302
212. BOGER, CHRISTINE-182 VINE ST. BRIDGETON,N.J.08302
182. BONER, TERRY-208 OPAL RD. LAUREL LAKE. MILLVILLE,N.J.08332
225. BONEK, LEONARD-BOX 75 MORTON AVE. ROSENHAYN,N.J.08069
36. BOONE, BYRON-101 11TH ST. MAYSLANDING,N.J.08332
224. BOOSE, GLORIA-32 ESQUIRE APTS. PENNS GROVE,N.J.08352
226. BOVENZI, MICHAEL-208 S. BREWSTER RD. VINELAND,N.J.08360
123. BRITTON, JUDY-110 FOAM RD. MILLVILLE,N.J.08332
87. BROWN, CLARENCETINE-119 WALNUT ST. BRIDGETON,N.J.08302
90. BROWN, CRAIG-409 HOWARD ST. MILLVILLE,N.J.08332
159. BROWN, NANCY-51 W. CHESTNUT AVE. APT. 45 A VINELAND,N.J.08360
58. BRUCE SR. RALPH-4509 NOEL DR. NEWFIELD,N.J.08344
9. BRUNO, LOUIS-R.D.#3 HOGBIN RD. MILLVILLE.N.J.08332
157. CAMPBELL, JOHN-340 DORIS DR. MILLVILLE,N.J.08332
160. CAPOLINGUA, PAMELA-3 WILSON PLACE,MILLVILLE,N.J.08332
25. CARR, TROY- 90 CENTRAL AVE. BRIDGETON.N.J.08302
20. CHAMPION, SCOTT-PATRICIA AVE. MILLVILLE,N.J.08332
33. CHANCE, DAVID-94 PEACHTREE LANE FAIRVIEW,MANOR MILLVILLE,N.J.08332
32. CHANCE, EDWARD-HIGH ST. LEESBURG,N.J.08327
217. COFER, DAVID-64 OAK ST. BRIDGETON,N.J.08302
48. COTTRELL, KEVIN-1460 N. MAPLE.DR. SEABROOK,N.J.08302
30. CRANER, ESTHER-517 PINE ST MILLVILLE,N.J.08332
115. CRANER, GERALDINE-328 S. 3 RD. ST. MILLVILLE,N.J.08332
49. CROWSELL, MITCHELL-1614 3 RD. AVE. SEABROOK,N.J.08302

227. DAVIS, RODERICK-106 W. MAIN ST. MILLVILLE,N.J.08332
70. DAVIS. JACQUE-1881 MOUNTAIN DR. MILLVILLE,N.J.08332
27. DE MAIO, PAMELA-328 S 5 TH ST. MILLVILLE,N.J.08332
174. DENBY, BEVERLY-R.D.#3 BUCKSHUTEM RD. MILLVILLE,N.J.08332
108. DILKS, CHARLOTTE-2130 WHEATON AVE. MILLVILLE.N.J.08332
177. DILCHUS, EDWARD-
1. DIMARCO, LOUIS-28 TONKIN ST. MANTUA,N.J.08051
228. DIONISI, JANET-1623 E. CHESTNUT AVE. VINELAND,N.J.08360
38. DODD, DEANNA-2205 QUINCE LANE MILLVILLE,N.J.08332
53. DONZOLA, EDWARD-R.D.#5 BOX 42 A MILLVILLE,N.J.08332
147. DOOLEY, NORMA-1026½ ARCHER ST MILLVILLE,N.J.08332
7. D'OTTAVIO, ROBERT-727 S. W. AVE. VINELAND,N.J.08360
125. DOWER, JANICE-752 S. E. AVE. VINELAND,N.J.08360
210. DOWER, VIOLA-752 S. E. AVE. VINELAND,N.J.08360
12. DUBOIS, JEFF-SHAMROCK LANE MILLVILLE,N.J.08332
102. DUFFY, CINDY-152 AMITY HEIGHTS BRIDGETON,N.J.08302
192. DUFFY, KATHLEEEN-321 POPLAR RD. MILLVILLE,N.J.08332
132. DUNCAN, RAY-20 N. 1 ST. RD. HAMMONTON,N.J.08037
133. DUNCAN, VIRGINIA-20 N. 1 ST. RD. HAMMONTON, N.J.08037
[illegible] DR. MILLVILLE,N.J.08332
[illegible]BERGER, PHYLLIS-P.O. BOX 154 PORT NORRIS,N.J.08349
[illegible]ISENHART, VIOLET-N. GERSHAL AVE. BROTMANVILLE,N.J.08360
6. ELLINGSWORTH, RUSSELL- 1988 W. CHESTNUT AVE. VINELAND,N.J.08360
60. ELWELL, DIANE- R.D.#2 BOX 98 RT. 40 MONROEVILLE,N.J.08343
3. ELWELL, SHIRLEY- COMMISSIONER PIKE WOODSTOWN,N.J.08098
165. ERNST, TOM- 945 SAWYER AVE. VINELAND,N.J.08360
15. EVANS, MYRON- 5757 INDEPENDENCE ST. VINELAND,N.J.08360

135. FANE, LOUISE- SAWMILL RD. CEDARVILLE,N.J.08311
167. FINCH, RITA- 713 WADE EAST APTS. MILLVILLE,N.J.08332

189. FLEEBE.JR. ROBERT- 4182 E. LANDIS AVE. VINELAND,N.J.08360
162. FLICKINGER, ELEANOR- 72.S. BROADWAY PENNSVILLE,N.J.08070
229. FLORES, WILLIAM- 19 E. BROAD ST. MILLVILLE,N.J.08332
169. FONTENOT. GLYNN- 319 E. ST. MILLVILLE,N.J.08332
215. FORD, BEVERLY- 525 PARK AVE. 1ST. FLOOR VINELAND,N.J.08360
75. FORD, ROBERT- 221 W. MAIN ST. MILLVILLE,N.J.08332
202. FORMAN, SADINE- 3 REDFERN DR. PORT NORRIS,N.J.08349
173. FORMENTO, JERE- 931 E. GRANT AVE. VINELAND,N.J.08360
152. FORTUNE, HEZEKIAH- 45 FREMONT AVE. BRIDGETON,N.J.08302

230. GALE, RALPH- FORTESCUE RD. NEWPORT,N.J.08345
188. GARRISON, HAROLD- DIVIDING CREEK RD. NEWPORT,N.J.08345
61. GARTON, HERBERT- 10 ROBINS AVE. PORT NORRIS,N.J.08349
80. GIBSON, PAUL- 216 GEISINGER AVE, MILLVILLE,N.J.08332
68. GIBSON, SCOTT- 228 GEISINGER AVE, MILLVILLE,N.J.08332
186. GODOWN, HORACE- R.D.#1 DRAGSTON RD. PORT NORRIS,N.J.08349
53. GONZALEZ, DOMINGO- BOX 292 S. MAIN ST. CEDARVILLE,N.J.08311
38. GONZALEZ, RUBY- BOX 292 S. MAIN ST. CEDARVILLE,N.J.08311
20. GRAY, SARAH- P.O.BOX 83 DEERFIELD ST. DEEERFIELD,N.J.08313
79. GRIER, JOHN- 1013 ATKINSON DR. MILLVILLE,N.J.08332
22. GUYTON, HORACE- R.D.#1 BOX 1058 FRANKLINVILLE,N.J.08322

04. HANNAH, BETTY- 713 E. BROAD ST. MILLVILLE,N.J.08332
16. HANNAH, LOUIS- 713 E. BROAD ST. MILLVILLE,N.J.08332
21. HALL, LORRAINE- BUCKSHUTEM RD. BRIDGETON,N.J.08302
94. HARDEN, NINA- 118 S. 6 TH ST. MILLVILLE,N.J.08332
70. HARMON, DEBBIE- 20 TIPS TRAILER PARK BRIDGETON,N.J.08302
91. HARRIS, BARBARA A.- 110 MAGNOLIA AVE. BRIDGETON,N.J.08302
51. HARVEY, CAROLYN- 760 CHRISTY LANE VINELAND,N.J.08360
0. HAWKINS, ERSKINE-
1. HEICHEL, MAURICE- 471 RHONDA DR. MILLVILLE,N.J.08332
3. HELMS, CHARLES-
9. HELMS, ROBERT- CARLTON HOUSE APTS. MILLVILLE,N.J.08332
1. HENDERSON, JANET- 1009 WOODLAND AVE.MILLVILLE,N.J.08332
0. HERMANSON, ETHEL- 508 EDWARD LANE VINELAND,N.J.08360
3. HEWITT, JOE- 49 W. MAIN ST. PORT NORRIS,N.J.08349
4. HILES, FRANK- 2201 W. MAIN ST. MILLVILLE,N.J.08332
1. HINDERHOFER, ALBERTA- 420 MAPLE ST. MILLVILLE,N.J.08332
3. HOGAN, DENNIS- 530 FLORENCE AVE. MILLVILLE,N.J.08332
5. HOOVER, CAROLINE- 5 A CUMBERLAND GREEN APTS, MILLVILLE,N.J.08332
3. HOOVER, LINDA- 803 WADE EAST APTS. MILLVILLE,N.J.08332
1. HOPEWELL, ANNIE- 8 N. REDFERN DR. PORT NORRIS,N.J.08349
. HORNES, MARY-36 B CARLTON HOUSSE APTS. MILLVILLE,N.J.08332
. HOWARD, MICHAEL-3 WILSON PLACE MILLVILLE,N.J.08332
. HOWELL, RICHARD- 418 SASSAFRAS ST. MILLVILLE,N.J.08332
. HUNT, BYRON- R.D.#5 BOX 11 A BRIDGETON,N.J.08302
. HURLEY, GORDON- BOX 97 LEESBURG,N.J.08327
. HUTTON, ELMER- 28 INGLEWOOD AVE. MILLVILLE,N.J.08332
. HYMER, HERBERT-

. IRWIN, JOHN- 127 CATHERINE AVE. BUENA,N.J.08310
. IVANOFF, VALENTINE- 55 S. BETHEL RD. MILLVILLE,N.J.08332

,N.J.08360
, JOHN- 415 N. 4 TH ST. MILLVILLE,N.J.08332
JERVIS, RICHARD- 2201 BALSAM LANE MILLVILLE,N.J.08332
06. JOHNSON, LARRY B.- STRAWBERRY AVE. PORT NORRIS,N.J.08349
119. JOHNSON, SHIRLEY- 116 SPRUCE ST. BRIDGETON,N.J.08302

195. KANESHIKI, STANLEY- 25 BIRDSALL DR. BRIDGETON,N.J.08302
207. KARPOLORICH, KEN- 512 MULBERRY ST. MILLVILLE,N.J.08332
95. KELLER, CAROL J.- R.D.#3 BOX554 GREENVILLE RD. ELMER,N.J.08318
163. KELLY, ROBERT- P.O.BOX418 PORT NORRIS,N.J.08349
178. KRIPAK, ANGELINA- 2089 N. DELSEA DR. VINELAND,N.J.08360

149. LABARGE, JOHN- 1438 N. BREWSTER RD. VINELAND,N.J.08360
13. LAMB, RONALD- R.D.#1 S. DELSEA DR. MILLVILLE,N.J.08332
144. LAMBERT, ROBERT- 24 F CUMBERLAND GREEN APTS. MILLVILLE,N.J.08332
34. LANGLOIS, GILBERT- P.O.BOX #1 S. DELSEA DR. DELMONT,N.J.08314
117. LEANZO, JOE- MERCURY WAY VINELAND,N.J.08360
142. LEBLANC, PHILLIP- 10 N. PARK AVE. MILLVILLE,N.J.08332
183. LEE, ARTEL- 2419 SHAMROCK LANE MILLVILLE,N.J.08332

26. LEE, JUDITH- 1133 LOUIS DR. MILLVILLE,N.J.08332
92. LEE, ROBERT- 2419 SHAMROCK LANE MILLVILLE,N.J.08332
206. LIKANCHUK, STEVE- 116 PEACHTREE LANE BOX 78 MILLVILLE,N.J.08332
241. LINDSEY, HENRY- 9 J CUMBERLAND GREEN APTS. MILLVILLE,N.J.08332
136. LINN, ROBERT D.- 6 N. PEARL ST. BRIDGETON,N.J.08302
168. LOECHNER, EVELYN- 8 PLANT ST. DEEPWATER,N.J.08032
214. LUERTZING, BARBARA- 2233 E. MAIN ST. MILLVILLE,N.J.08332
118. LUPPERGER, JAMES- 508 E. MAIN ST. MILLVILLE,N.J.08332

47. MACKOW, SOPHIA- 513 PINE ST. MILLVILLE,N.J.08332
67. MADKIFF.III, JOHN- 3730 S. DELSEA DR. MILLVILLE,N.J.08332
239. MALAVE, JOSE C.- 535 MARTINELI AVE. BUENA,N.J.08310
40. MATHIS, ROBERT- 41 SMITH AVE. BRIDGETON,N.J.08302
43. MAZZONI, ANN- R.D.#5 BOX 397 ROSEDALE DR. BRIDGETON,N.J.08302
209. MCCLURE, STEVE- 1112 LOIS DR. MILLVILLE,N.J.08332
83. MCCOLLUM, STEWART- 325 HOWARD ST. MILLVILLE,N.J.08332
154. MC COY, DARREL- 6 MONROE PL. MILLVILLE,N.J.08332
231. MC FARLAND, NANCY- 3730 S. DELSEA DR. VINELAND,N.J.08360
122. MC MAHON, GORDON- R.D.#3 BOX 231 E MILLVILLE,N.J.08332
19. MEADE, MARION- 249 E. COMMERCE ST. BRIDGETON,N.J.08302
213. MECKE, DOUGLAS- 1976 N.E. AVE. LOT 158 VINELAND,N.J.08360
57. MENSHA, ATTU- P.O. BOX 455 MILLVILLE,N.J.08332
93. METTETAL, HARRIETT- 800 S. 2ND ST. MILLVILLE,N.J.08332
232. MILCAREK, LEON J.- 12 MARLYN TERRACE MILLVILLE,N.J.08332
126. MILLER SR. ROBERT- P.O. BOX 282 MILLVILLE,N.J.08332
101. MINGIN, FRANK- 503 S. 2ND ST. MILLVILLE,N.J.08332
5. MOORE, LOIS J.- 164 N. PEARL ST. BRIDGETON,N.J.08302

23. NAKATA, GENE- 1011 SCHOOL LANE SEABROOK,N.J.08302
109. NAPPA, AL- 46 N. MAPLE ST. VINELAND,N.J.08360
114. NEFF, WILLIAM R.- 771 S. E. AVE. APT. 61 VINELAND,N.J.08360
44. NELSON, ELLA- 724 EDWINA RD. BRIDGETON,N.J.08302

105. O'BRIEN, IRMA- 294 DORIS DR. LAUREL LAKE, MILLVILLE,N.J.08332
124. ORANGE, CAROL- 28 NEW ST. BRIDGETON,N.J.08302
179. ORBANUS, NANCY- G 18 APPLE TREE SQUARE VINELAND,N.J.08360

156. PADILLA, WILFREDO- R.D.#7 BOX 461 BRIDGETON,N.J.08302
74. PANFORD, ANTHONY- 10 H DELSEA GARDENS MILLVILLE,N.J.08332
10. PARLIMAN, GEORGE- 708 E. BROAD ST. MILLVILLE,N.J.08332
216. PAYNE, CHRISTINE- 833 N. MAIN ST. VINELAND,N.J.08360
158. PENDER, JOHN- 652 BUCKSHUTEM RD. BRIDGETON,N.J.08302
46. PERRY , RICHARD- 462 RHONDA DR. MILLVILLE,N.J.08332
[illegible] AN, SHIRLEY- 1181 HANCE BRIDGE RD. MILLVILLE,N.J.08332
[illegible] TIT, WILLIAM- 314½ N. 2 ND ST. MILLVILLE,N.J.08332
[illegible]. PHONEVILLE, CLAYTON- 409 E. BROAD ST. MILLVILLE,N.J.08332
164. PURNELL, HILENA- APT. 74 AMITY HTS. BRIDGETON,N.J.08302

161. RANSOME, AUDREY- 55 MADALE PL. PENNSVILLE,N.J.08069
56. REHMAN, KIMBERLY- 7 A CARLTON HOUSE APTS. MILLVILLE,N.J.08332
17. RHODES, THERESA- 893 CHARLES ST. VINELAND,N.J.08360
134. RIGGIN, CARL- MAIN ST. DORCHESTER,N.J.08316
176. RISLEY, HELEN- 309 COLUMBINE AVE. MILLVILLE,N.J.08332
51. ROBINSON, MARY ALICE- 802 S. 2 ND ST. MILLVILLE,N.J.08332
65. ROBINSON, MARY L.- 317 E ST. MILLVILLE,N.J.08332
69. ROBINSON, TETT- 312 E. BROAD ST. MILLVILLE,N.J.08332
107. ROBLES, ALFRED- 431 CHERRY ST. VINELAND,N.J.08360
218. ROMAN, CARLOS- 330 LINNWOOD AVE. VINELAND,N.J.08360
6. RUSSELL, GEORGE- 535 RICHARD DR. MILLVILLE,N.J.08332

148. SAMPLES, BRENDA- 629 N. 2 ND ST. MILLVILLE,N.J.08332
14. SCATES, JEFFREY- 22 MARKLEY DR. BRIDGETON,N.J.08302
77. SCHMITT, WILLIAM E.- 190 VILLAGE OF PINE RUN BLACKWOOD,N.J.08012
66. SCHUM, JOHN- 317 E ST. MILLVILLE,N.J.08332
62. SCOTT, GEORGE- 714 PHILLIP DE SANIS WOODBINE,N.J.08270
29. SCULLY, EMILY- 3 H MILLVILLE GARDENS MILLVILLE,N.J.08332
55. SHANNON, JAMES J.- 4 PARK AVE. MILLVILLE,N.J.08332
197. SHARP, JOE W.- 216 S. 3 RD ST. MILLVILLE,N.J.08332
140. SHELTON, EVELYN- 1012 ARCHER ST. MILLVILLE,N.J.08332
88. SIERI, FRANK- 3003 DANTE AVE. VINELAND,N.J.08360
137. SIGMON, ALVIN- 108 E. VINE ST. MILLVILLE,N.J.08332
187. SLATER, EDITH- 705 N. 8 TH ST. MILLVILLE,N.J.08332

186. SLATER, JAMES- 705 N. 8 TH ST. MILLVILLE,N.J.08332
89. SLIMMER, ROBERT E.- 306 DANDELION RD. MILLVILLE,N.J.08332
155. SMITH, CHERYL E.- 8 KING DR. BRIDGETON,N.J.08302
234. SMITH, DAVID G.- 1497 BLACKBURN CT. VINELAND,N.J.08360
235. SOOY, MICHAEL- R.D.#2 BOX 394 BRIDGETON,N.J.08302
219. SPICKENRUTHER, FRED- R.D.#6 WEST LANDIS AVE. BRIDGETON,N.J.08302
171. SPRAGUE, DOUGLAS- 305 N. 5 TH ST. MILLVILLE,N.J.08332
99. STARKEY, JOHN- 23 PARK DR. BRIDGETON,N.J.08302
193. SWYDERSKY, FRANK- 585 SHILOH PIKE BRIDGETON,08302
192. SWYDERSKY, LOUISE- R.D.#6 PARVIN MILL RD. BRIDGETON,N.J.08302
205. SYKUT, ANDREW- 9 HILLSIDE AVE. MILLVILLE,N.J.08332
184. SZYMANSKI, OLGA- 1828 W. MAIN ST. MILLVILLE,N.J.08332

111. TARLTON, FRANCIS- 304 E. BROAD ST. MILLVILLE,N.J.08332
94. TAYLOR, DONALD- R.D.#4 BOX 508 BRIDGETON,N.J.08302
41. TAYLOR, PAMELA- 234 L PARK CREST VILLAGE GLASSBORO,N.J.08028
27. THOMPSON, BEVERLY- 409 E. BROAD ST. MILLVILLE,N.J.08332
30. THOMPSON, BRIAN- 372 BATTLE LANE LAUREL LAKE MILLVILLE,N.J.08332
96. TOULSON, VINCENT- 1606 BEACH AVE. ATLANTIC CITY,N.J.08401
08. TOWNSEND, ENID- 33 B CARLTON HOUSE APTS. MILLVILLE,N.J.08332
81. TURPIN, LESTER- 115 SMITH ST. MILLVILLE,N.J.08332
76. TURPIN, SUE LLOYD- 1914 E. OAK RD. VINELAND,N.J.08360
39. TYSON, JOANNE B.- 526 N. SHARP ST. MILLVILLE,N.J.08332
41. TYSON, PAULINE- 526 N. SHARP ST. MILLVILLE,N.J.08332

51. UNDERWOOD, MARY- 833 N. MAIN ST. APT. 83 VINELAND,N.J.08360
36. USATSCHEW, RUZICA- 3134 LINCOLN AVE. VINELAND,N.J.08360

85. VANDEMARK.JR. THEODORE P.--812 N. HIGH ST. MILLVILLE,N.J.08332
98. VANDEMARK, THEODORE- 215 MORIAS AVE. MILLVILLE,N.J.08332
04. VAN ZANDT GENGU (SIN)- 189 TIPS TRAILER PARK
868 E. COMMERCE ST. BRIDGETON,N.J.08302
53. VASTANO, DAVID- 1685 FAIRMONT AVE. VINELAND,N.J.08360
00. VURGANOV, VICTOR- 2037 WHEATON AVE. MILLVILLE

ER, ALBERT- 3137 CANBERRA COURT VINELAND,N.J.08360
WALLER, HERMUS- 3137 CANBERRA COURT VINELAND,N.J.08360
98. WALLER, DARLENE- R.D.#1 BOX 306 A ELMER,N.J.08318
129. WALTERS, ROBERT- c/o LOTTIE MACK NORTH AVE. CEDARVILLE,N.J.08311
45. WARZBOK, M. MICHAEL- 370 CARMEL RD. MILLVILLE,N.J.08332
75. WATSON, NAN-50 W. ALMOND ST. VINELAND,N.J.08360
72. WEST, FRED- R.D.#9 BOX 15 DUBOIS RD. BRIDGETON,N.J.08302
12. WHARTON, JOHANN- R.D.#4 BOX 412 AA MILMAY,N.J.08340
03. WHEATON, THEODORE F.- 77 COLUMBIA AVE. VINELAND,N.J.08360
50. WICKMAN, DEBORAH- 119 TAMARACK RD. MILLVILLE,N.J.08332
237. WILDIN, SAMUAL- 211 S. 4 TH ST. MILLVILLE,N.J.08332
72. WILLIAMSON, E. H.- 5 N. RIVER DR. WILLIAMSTOWN,N.J.08094
84. WILLINGHAM, EVELYN- M 9 BROOKSIDE DR. SALEM,N.J.08079
46. WYSZENKO, STEFAN- 292 MAGNOLIA RD. MILLVILLE,N.J.08332

06. ZEIGLER, PAT- P.O. BOX 693 MILLVILLE,N.J.08332

Senator GRASSLEY. Mr. Young.

STATEMENT OF DAVID YOUNG

Mr. YOUNG. My name is David Young. I am a 23-year-old nonunion carpenter from Ft. Lauderdale, FL.

On February 9, 1983, I went to the jobsite of Broward County main library. I was sent there by my employer. My employer had bid on the interior drywall and panel fold installation of doors on the jobsite.

As soon as we arrived on the job—all the other employees that were working on the jobsite were union. We are nonunion. We had been warned by a business agent for the laborers—he had called my boss the day before—that there would be trouble on the jobsite if we showed up, but we never expected the kind of abuse and threats and attempts on our lives that we received.

When we reached the jobsite, we were greeted by 100 or so screaming workers. They are here. The scabs are here and many obscene and threatening expressions.

The gate to enter the project had been blocked by a truck that belongs to the head of the laborers union. We somehow managed to squeeze our truck around it and proceed to backup our truck to the loading dock. Then the danger began.

With a chorus of screams and threats constantly going on, we were subject to physical danger by hurling rocks, scraps, grapefruits, conduit pipe, and finally cinder blocks.

We tried to unload the truck, but we were constantly dodging the many objects thrown from the upper floors of the eight-story construction site. A cinder block would fall and hit the metal grating that eventually became a skylight in the entrance of the library, shattering us and hitting us with all kinds of debris.

My—I asked my boss to see if he wanted me to watch out for the articles that were coming down. At that time there were four of us in the truck, and my boss told me to watch for the articles to fall down so they did not hit anybody. Every time something came down, I would yell and everybody would scatter.

Two of the cinder blocks hit the roof of the truck that we were in and went completely through. Cinder block fell and it would hit the steel grating in front of the—in back of the truck where we were unloading at, and pieces of the rock would come in the truck and hit us.

At this time I was scared. I just did not know what to do. I did not know that what was going on—I had not done nothing to them. And finally we had unloaded the truck. We moved under the building where the falling objects could not hit us.

At that time 50 or 60 of the angry workers walked up to us and surrounded us. They called us names and screamed obscenities. Several of them tried to single us out individually and call us out to fight.

They said things like, "I want this M-fer." He would walk up to us, point a finger at us, call us out, and start a fight.

This continued for approximately 10 minutes until an opening broke in the crowd and we moved into the auditorium. At the time that we moved into the auditorium, it was a mistake. The crowd followed us into the auditorium and trapped us. They sealed off the exits and continued to scream at us.

We cowed into a corner of the stage as they threw rocks and chanting, come here, work here, die here, leave now if you want to keep your balls.

Someone kept turning the lights on and off, and some of the union men were pushing stage curtain metal rods at us, attempting to knock us over. At one point someone threw a 4 by 4 which hit a police officer who had been standing between the union crowd and our group.

The officer ran through the crowd and out of the auditorium, and that officer never came back into the auditorium.

At that point I was relatively certain that either I was going to get killed or at least severely beaten. Fortunately, our boss was able to work something out with the laborers' business agent who had came into the auditorium to talk with my boss to try to have him hire union labor for the job.

After that we gathered up some of our material and we left the jobsite.

That night on the TV news, I saw the Ironworkers' business agent brazenly threaten that if we come back to the job, the same thing will happen. I have refused to work there since.

In my opinion, this kind of outrageous conduct must be punished and prevented in the future. Unions must learn that while they have the right to pursue their legitimate objectives peaceably, they are not above the law and cannot use violence, threats, and terror as a means of achieving their goals.

One thing about the police officers, we—my boss had hired two police officers to stand there. We had received phone calls stating that there would be trouble. My boss took measures to protect us if we needed it. The police officer that went into the stage—that went into the auditorium with us was there approximately 5 minutes, and he got hit. He took off out of the crowd, never to reappear.

We were in there by ourselves. We walked outside. We were in the auditorium for approximately 50 minutes. We got out of the auditorium, and the police officers were standing outside. They were just standing there. They were doing nothing.

And I just did not feel that I was protected by the police the way I should have been. I mean, I have a right—they should have came back in the auditorium where we were. They obviously knew that we were trapped in there because they could see the people that were surrounding us.

I just do not—I guess that is it.

Senator **Grassley**. Well, I want to thank you both. I have some questions I want to ask you. I do not think the questioning will be quite as long as the previous questioning was, but I would hope that you could help us by answering these questions.

I will start with you, Mr. Guyton. What was the purpose of the strike that occurred at your employer in New Jersey?

Mr. **Guyton**. The contract, the 3-year contract that we previously had was up, and the union was striking for better benefits and wages and mostly seniority.

Senator **Grassley**. Did you participate in the strike?

Mr. **Guyton**. No.

Senator **Grassley**. Why did you not honor your union's strike?

Mr. **Guyton**. I stayed out the first 2 days that the strike started. I stayed out for 2 days. The first day I went to the union hall. I spent my whole day there trying to find facts out about what the strike was all about. The union officials would not even talk. They stayed among themselves.

They never called me and told me that they were going to strike first thing Monday morning or nothing. The second day I went to the company to find out what it was about, and if I wanted to come back to work, what could I do to come back. I did get a response from the company. If I wanted to work, the time card is there, come punch it in. You will not be harassed in this plant.

And, financially, God gave me the sense to know that if I do not work, I do not eat. And I do not have no one to put food on the table for me and my family. But if the union would have at least talked to me, 9 times out of 10 I probably would have honored the strike, even though I did not have the right to vote on whether or not we wanted to strike.

VIOLENCE BY UNION MEMBERS

Senator **Grassley**. As a result of not honoring the strike, did you experience the use of force, violence, or fear directed against you?

Mr. **Guyton**. Yes.

Senator **Grassley**. By whom were these acts committed?

Mr. **Guyton**. By union members.

Senator **Grassley**. Did these persons hold any office in the union or act with the approval, knowledge, or authority of any officer in the union?

Mr. **Guyton**. I feel they did. They put out a hit list. That is letting everyone know where I am living, and each time I moved, they updated the list, you know, my address. So, yes, I do feel strongly that the union knew.

Senator **Grassley**. Do you know of the use or force or violence against any other persons you worked with?

Mr. **Guyton**. Yes.

Senator **Grassley**. Has your family been the subject of this force or fear?

Mr. **Guyton**. Yes. My wife has been harassed constantly. Like I said earlier, I work 10 to 12 hours a day, and that is late evening. And constantly there have been cars parked in front of my house, the side of my house, up the street. I have come home many times between 1 to 5 in the morning and found glass broke all up against the side of my house and on my steps. This has gone on constantly, constantly.

Senator **Grassley**. What was the purpose of the list that you referred to as the union scab list that had the addresses of where people—who they were and where they lived?

Mr. **Guyton**. Well, as far as I know, the list was to let the union members who honored the strike know which people did not go on strike, the people that crossed the picket line, for the purpose of harassment, abuse.

Senator **Grassley**. At any time did you seek the assistance of State and local law enforcement officials?

Mr. GUYTON. Yes, I did. When I—I had a man that was on the picket line waving a knife at me. I called the city police. They said it was out of their jurisdiction, that they would call the county sheriff's department, which they did. And they told me that when they come out front, to go out and explain to them what happened. That I did. And they sent me back up to the building and said they would handle the matter.

Well, come to find out, whoever these sheriffs were, they knew the people, well, this one guy who was brandishing the knife, they stood out there and talked with him for about a half an hour, then came up to the building where I was, and told me that if they called and said I was harassing them verbally, they were going to lock me up. And that was that. They would not search him for the knife or anything.

Senator GRASSLEY. Well, then, obviously, they were not of any help in any of the instances in which you contacted them.

Mr. GUYTON. Right. Not only that, but there are quite a few times when you can ride through town and see the police getting coffee and doughnuts for the strikers. So, really, I mean, who is to protect? Who is going to protect you is what I am trying to say.

Senator GRASSLEY. There were no arrests made, no charges filed?

Mr. GUYTON. Not with—well, they wrote it up, this one incident with me. Now, at the main plant and other parts where they are striking, they have had arrests up to—I know there is one time where they arrested like 70-something people and another time they arrested 50-something. Now, everything is still pending in court. I believe next month all the cases will go to court.

I heard last week that the union was telling the people that union members had dropped their charges against the company and against strikers. I do not know how that is right now at this time, but as of Friday, that is what was going on.

Senator GRASSLEY. What was the charge when they were arrested?

Mr. GUYTON. It was varying charges. I am not sure. The plant is up the street from mine. There are quite a few plants and industries in that town. And everything from rock throwing, placing nails and stuff in the driveways, breaking windows, things like that.

Senator GRASSLEY. Well, then nothing has ever happened to those who threatened you and your family.

Mr. GUYTON. No.

Senator GRASSLEY. Do you believe that as a result of what happened to you, others will be less likely to go against the union's demands?

Mr. GUYTON. It is really hard to say because the way the town is, it is a tight community. A lot of people know each other. The cops know the workers, and vice versa. And I am not really from that town. And for them to know what I have experienced—and I have had people I do not even know call me scab and different names in downtown Millville. That was really—I really would not know. I know what I am going through, and some people that I know crossed the picket line after me, after what they went through, I only can judge by the people that are in my situation. I really cannot speak for the town.

Senator **Grassley**. But at least you conclude that there is some chilling impact of the things that happened to you. Obviously, it is not going to encourage people to go against the union's demands.

Mr. **Guyton**. Right. It will not encourage them, but by the way the union is now, if the people had of voted at the beginning of the strike, they never would have went out there. And people are coming to realize that the union is not really for the people. It is like vice versa. The people are supposed to be out there for the union. That is the way it seems.

Senator **Grassley**. Mr. Young, what was the purpose of the picketing at the Florida construction site?

Mr. **Young**. I beg your pardon?

Senator **Grassley**. The purpose of the picketing that went on at your Florida construction site?

Mr. **Young**. The picketing, I believe, began after we left. They had stopped work when we got there, and started harassing us.

And then after we had left, I believe they were picketing something, that they did not want a non-union contractor on their job. And my boss had gone to court and got a temporary injunction to work on the job, to be able to be protected by the law.

Senator **Grassley**. Was that project a government project?

Mr. **Young**. It was—it is a county building.

Senator **Grassley**. For a local government project, county.

Mr. **Young**. Yes, it is a library.

Senator **Grassley**. As a result of not honoring the picket line, did you experience any force, violence, or fear directed against you?

Mr. **Young**. Yes.

Senator **Grassley**. By whom were these acts committed?

Mr. **Young**. By union members.

Senator **Grassley**. Did these persons hold any office in the union or act with the approval, knowledge, or authority of any officer of the union?

Mr. **Young**. There was union officers on the job site.

Senator **Grassley**. Do you know of the use of force or violence against any other people?

Mr. **Young**. The other nine colleagues that were with me.

Senator **Grassley**. What was the response of local law enforcement?

Mr. **Young**. Like I said, the officer that walked into the auditorium with us, he left. And there were two officers outside of the building on the job site, and there were four officers outside of the jobsite that were out there. There were one arrest made by a—a union laborer was arrested for throwing cinder blocks. And they took him outside, but there was still only—there were two officers against 80 people. What could they do?

They did exactly what they could do; they left.

Senator **Grassley**. Have any charges been filed or arrests made?

Mr. **Young**. Can I talk to my——

Senator **Grassley**. Yes.

[Pause.]

Mr. **Young**. The original was aggravated assault, and now they have dropped it to simple assault.

Senator **Grassley**. Has anything, then, other than the charges being filed happened to those who commited the acts against you?

Mr. **Young**. I have received seven subpoenas to go to court for this guy that threw the cinder blocks on the truck that I was in, and he has never been to court yet. He is related to, I believe, a business agent, and for the laborers, and I believe that the union is paying for his attorney fees, from what I can tell.

Senator **Grassley**. Do you believe that as a result of what happened to you, others will be less likely to go against the union?

Mr. **Young**. Yes.

Senator **Grassley**. Has the official that boasted that the same thing would happen—has the union official that boasted that the same thing would happen been disciplined by the local union or by the parent organization?

Mr. **Young**. Not to my knowledge.

Senator **Grassley**. And what is the parent organization in this case?

Mr. **Young**. I beg your pardon?

Senator **Grassley**. The parent organization for the union, the local union; what is it affiliated with?

Mr. **Young**. You mean the carpenters, laborers——

Senator **Grassley**. Yes.

Mr. **Young** [contining]. And ironworkers.

Senator **Grassley**. Based on your experience, would you say that the union condoned this action against you and against others?

Mr. **Young**. Yes.

Senator **Grassley**. That's all of my questioning. I want to thank everybody who participated in this hearing. As has been indicated by the chairman of the committee, Strom Thurmond, in his testimony, there may be further opportunities for testimony to be given. I think it is important to remember that six of the seven incidences of violence that we have discussed here today occurred just this past summer. And the more that we look into this area, the more cases come to our attention. The record that we have made here today is a valuable contribution to the information that we already have on the topic.

Again, I want to thank all of our witnesses and note that the record will remain open for a period of 2 weeks if anyone wishes to add any material to the record or correct anything that has already been said.

The meeting is adjourned.

[Whereupon, at 1:43 p.m., the hearing was adjourned.]

[The following was subsequently supplied for the record:]

MONTANA
POWER
COMPANY
mpc
GENERAL OFFICES: 40 EAST BROADWAY, BUTTE, MONTANA 59701 • TELEPHONE 406/723-5421

1983 OCT 26 PM 12:57

WALTER G. KELLEY
EXECUTIVE VICE PRESIDENT
and
CHIEF OPERATING OFFICER

October 20, 1983

Senator Charles E. Grassley
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Grassley:

I regret because of my need to travel to the West Coast that I will be unable to appear before your committee.

It is my understanding that Mr. W. B. Haines of Haines Pipeline Construction Company has been contacted by your office. It is his intention to condense some transcripts of Federal Court hearings and send them to you. This sworn testimony is factual and is of far more value than any I can offer. The focus of the testimony is on the exact issues addressed in your letter of invitation.

Thank you for your invitation.

Sincerely,

Walter G. Kelley

WGK/ll
cc: Veronica Gonzales

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

EXECUTIVE COUNCIL

LANE KIRKLAND PRESIDENT **THOMAS R. DONAHUE** SECRETARY-TREASURER

John H. Lyons
S. Frank Raftery
Glenn E. Watts
Angelo Fosco
Lloyd McBride
Wm. W. Winpisinger
John DeConcini
Joyce D. Miller
Frank Drozak
Richard I. Kilroy
William H. Bywater
Thomas W. Gleason
Murray H. Finley
Sol C. Chaikin
Charles H. Pillard
Kenneth T. Blaylock
William H. Wynn
Wayne E. Glenn
John J. Sweeney
James E. Hatfield
Vincent R. Sombrotto
Marvin J. Boede
Frederick O'Neal
Albert Shanker
Edward T. Hanley
J. C. Turner
Alvin E. Heaps
John J. O'Donnell
Robert F. Goss
Douglas A. Fraser
Barbara Hutchinson
Gerald W. McEntee
Patrick J. Campbell

October 25, 1983

Honorable Strom Thurmond, Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On October 25, 1983, the Committee, in a session chaired by Senator Grassley, held a hearing on S. 462, a bill to amend the Hobbs Act so as to overrule the decision of the Supreme Court of the United States in United States v. Enmons, 410 U.S. 396 (1973).

Even though all concerned agree that the purpose and effect of S. 462 is to extend the Federal Government's authority during labor disputes, neither the AFL-CIO nor, so far as we are aware, any individual labor organization, whether affiliated with the AFL-CIO or not, was invited to testify at the October 25th hearing. Instead, the witnesses were limited to individuals and groups who support enactment of S. 462.

The AFL-CIO's position is that S. 462 should not be enacted into law and, indeed, that the bill is so flawed as to be unworthy of your Committee's attention. However, in light of the hearings just noted, and if it is your intention to bring S. 462 before the Committee for consideration, I hereby request that step be taken only after a second day of hearings is held in which the AFL-CIO and others opposed to the bill are given the opportunity to testify.

Sincerely,

Ray Denison

Ray Denison, Director
DEPARTMENT OF LEGISLATION

cc: Senate Judiciary Committee members

LABOR VIOLENCE AND THE HOBBS ACT

MONDAY, APRIL 30, 1984

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Grassley (acting chairman) presiding.

Also present: Senator Thurmond.

Staff present: Dick Dargan, counsel, full committee; Lynda Nersesian, chief counsel and staff director, Terry T. Campo, counsel, and Veronica Gonzales, legislative aide, Subcommittee on Administrative Practice and Procedure.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator Grassley. I would like to call this meeting of the Senate Judiciary Committee to order. The purpose of today's hearing is to receive testimony on S. 462, Union Violence and the Hobbs Act.

I have always believed that it is wrong to use physical violence, property damage, and intimidation to achieve one's goals, no matter how noble that goal and no matter who is the person using that violence or intimidation. The Supreme Court of the United States, however, ruled a decade ago in the *Enmons* case that extortionate violence was not illegal if the perpetrator was a union member or officer purusing a, in the Court's words, "legitimate union objective." The Court based that decision on a misinterpretation of the intent of Congress in 1946 when the Hobbs Act became law.

Because I believe that the Court's decision and the resulting emasculation of the law was so fundamentally wrong, early last year I introduced S. 462. This bill amends the Hobbs Act by eliminating the language in the law on which the Supreme Court based its decision, and by specifically stating that the fact that the perpetrator of the violence had a "legitimate business or labor objective" is not a defense to Federal prosecution for extortion.

In so doing I became the second Member of the Senate to introduce a bill aimed solely at reversing the *Enmons* decision, following the lead of the distinguished chairman of the Judiciary Committee, Senator Strom Thurmond, who is here with me this morning. To date, 22 of my Senate colleagues have joined me in sponsorship of S. 462, including 8 of the members of the Judiciary Committee. A similar bill in the House of Representatives now has the sponsorship of more than 60 Members of Congress.

Some people have asked why I, as a Iowa Senator, am so concerned with the Federal extortion law and the problem of union violence. Recently I received a letter from a constituent that may help explain my concern, and I would like to quote from that letter:

> * * * the first time I was approached to join a union was at gun point, on highway 63 south of Ottumwa, on a hill, at night.
>
> The Goon holding the gun in my ribs smelled of alcohol. That scared me, he said. He told me it would be mighty hard on my head if I did not join the union, out here on these hills at night, alone. Because of his alcohol breath, and gun, I was 100 percent agreeable.
>
> * * * I was advised by my employer to join. He had already lost two trucks.

I thought surely that man was talking about the 1930's, so I contacted him. Fortunately, he was talking about "the old days" in his letter. But then it occurred to me that even if that happened tomorrow night, on Highway 63, south of Ottumwa, IA, the guy with the gun could legally get away with it.

And, frankly after meeting some of the people I have met in the past several months, I have concluded that that sort of thing is going on now. In many parts of our country, the "bad old days of the 1930's are back."

On October 25, 1983, this committee focused on the personal victims of union violence. Businessmen and nonstriking employees of large and small companies told this committee of personal physical attacks upon them, death threats directed at them as well as at members of their family, and destruction of property; all acts of violence aimed at making it too costly or too risky to not agree to what the union wanted. At that hearing victims of union violence from seven different States told the committee of their experiences with unchecked terror. All but one of those witnesses were talking about things that happened this past summer, not sometime way back in the 1930's. The other was talking about the previous year.

In addition, at a previous subcommittee hearing we heard from victim witnesses from two more States. And I have also reviewed newsclippings of extensive violence from at least five more. All told, I have reviewed evidence of serious union violence from at least 14 States, and all of them recent actions. Today and tomorrow we will hear from still more. Clearly, this is not something going on only occasionally or just in one part of the country.

These incidents have included mine workers, carpenters, and other building trades, lumber workers, janitors, truckers, even airline pilots involved in perpetrating violence against their fellow workers who did not go along with the union.

These cases represent a nationwide pattern of violence, requiring the attention and resources of the Federal Government to bring it to an end and to bring the perpetrators to justice.

Extortion is the taking of property from another with their consent but with that consent having been obtained by the use of force, violence, or intimidation. In the labor relations area, physical violence can be directed against nonstriking or nonunion workers to keep them from working against the union's wishes. And an employer can see hundreds of thousands of dollars' worth of equipment destroyed, legally, if he resists the union. This gives a labor union added power in the collective bargaining relationship.

I would like to, at this time, turn to the chairman of this distinguished committee, the distinguished Senator from South Carolina, Senator Strom Thurmond for any statement he cares to make at this point.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The **Chairman**. Thank you very much, Mr. Chairman.

Today, we continue the hearings on S. 462, a bill to amend the Hobbs Act. Almost identical to S. 2189, which I introduced in the 97th Congress, this measure has received extensive review since it was introduced by Senator Grassley early in the 98th Congress. An initial hearing was held in March 1983 by Senator East, chairman of the Subcommittee on Separation of Powers.

The bill then was reported out favorably to the full committee on July 19, 1983. Subsequently, a further hearing was held at the full committee level to give organized labor ample opportunity to submit testimony. Although declining the invitation to appear on the basis of their unchanged position from earlier statements, they have now indicated a desire to be heard. We shall be pleased to receive their testimony during this series of hearings.

As I have said before, S. 462 is necessary to undo the effects of the 1973 Supreme Court decision, *United States* v. *Enmons,* which condoned violence in labor disputes as long as it serves legitimate collective bargaining objectives.

I do not agree that violence or intimidation, regardless of its source, can ever be used to disrupt commerce. I firmly believe that the Hobbs Act, as originally written, was meant to apply to everyone. There was never any congressional intent to provide an exception for any group or individual.

As Congressman Samuel Hobbs, the author of the bill, stated at the time the bill was passed, "Crime is crime no matter who commits it and that robbery is robbery, and extortion is extortion whether or not the perpetrator has a union card."

This amendment is necessary to ensure that these union officials and their agents who are not law abiding are subject to the same laws that apply to every other American.

I feel that this act which I, along with 20 other Senators, cosponsor with Senator Grassley, is an equitable approach to this problem, covering only the conduct legitimately within the Federal interest.

Senator Grassley is to be commended for his willingness to conduct these hearings and for his continued commitment to find a solution to this judicial anomaly.

I also wish to thank the witnesses who will testify this morning. In addition to the representatives from organized labor, it is my understanding that several congressmen as well as private individuals who have been directly affected by the use of violence and extortion in labor disputes, will be present.

I am sure their remarks will be of great interest and help to this committee.

Thank you, Mr. Chairman.

Senator **Grassley**. I want to thank the Senator from South Carolina for being so helpful to me as well as his staff throughout all the efforts to plan not only this hearing but the ones that we held in the last several months. I want to say that it would not have been possible to bring all of of this great amount of evidence to the attention of the public at large without your help and, of course, your leadership over the last several years in introducing this bill as well has shown that you are clearly willing to blaze a trail to bring law and order to legitimate collective bargaining activities.

At this point I would like to call the committee's attention to the fact that CBS did a good job describing just how union violence works in collective bargaining goals and objectives, and it did a news broadcast on the Greyhound strike.

At this point, I would like to run a video tape of that before we have our first witness, and I believe the date for this broadcast was November 15 of last year. So could we have that at this point?

[Whereupon, a video tape was shown.]

Senator **Grassley**. Before I call the first witness I wish to place a statement by Representative J. Kenneth Robinson in the record.

[The statement follows:]

STATEMENT OF REP. J. KENNETH ROBINSON

LABOR VIOLENCE AND THE HOBBS ACT: THE NEED TO AMEND THE LAW

Thank you, Mr. Chairman, for the opportunity to testify this morning at your hearings on the need to amend the Hobbs Act.

As all of us know, the federal government recognizes the importance of labor-managment relations to interstate commerce and accordingly has pre-empted this area of the law with the passage of legislation such as the Wagner Act, which in general gave employees a right to organize, to bargain collectively, and to engage in concerted activities such as striking and picketing.

This legislation was notably one-sided in nature, providing no corresponding protections for management, and virtually no protection for employees from union abuses. The Taft-Hartley Act and the Landrum-Griffin Act subsequently amended the law in attempt to provide a balance to the growing and aggressive union exercise of economic power.

Federal legislative attempts to control union violence began with the Anti-Racketeering Act of 1934, which was one of a number of bills resulting from investigations into racketeering conducted in 1933 by a subcommittee of the Senate Committee on Interstate Commerce. With this legislation the federal government recognized that labor violence was a problem which state and local governments could not control.

The 1934 act addressed the crime of extortion, which is described as the taking of property from another by using force or violence to obtain another's consent. It later amended this legislation with the passage of the Hobbs Act, in order to make it clear that no exemption was intended in the case of wage payments "by a bona fide employer to a bona fide employee." The Hobbs Act was directed toward:

> Whoever in any way...obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so, or commits or threatens physical physical violence to any purpose or property...

In 1973, a special exemption from the Hobbs Act was created for organized labor in direct contradiction to Congressional intent. The Supreme Court decided in United States v. Enmons that the Hobbs Act did not apply in instances where the goal of the extortion was a legitimate labor objective, such as higher wages or benefits. A special exemption was thereby created for organized labor. Thus although most violators could be prosecuted under the Hobbs Act for extortionate behavior, including violence, labor in most cases could not.

There is no doubt that this decision clearly violates Congressional intent. No special exemption was ever contemplated for labor violence by the drafters of the Hobbs Act. Congressman Hobbs himself had stated that "crime is crime no matter who commits it, and...robbery is robbery and extortion is extortion, whether or not the perpetrator has a union card."

As Supreme Court Justice Douglas summarized in his dissent in the Enmons decision:

> Seeking higher wages is certainly not unlawful. But using violence to obtain them seems plainly within the scope of extortion as used in the Act,...The regime of violence, whatever its precise objective, is a common device of extortion and is condemned by the Act.

To say that it is unfortunte that labor violence is encouraged by the Hobbs Act exemption vastly understates the problem. Your Committee may be aware that the House Republican Study Committee held a hearing to focus on this issue early in February of this year. Testimony at this hearing reinforced findings made by your

Subcommittee on Separation of Powers last October, and by studies such as the comprehensive study on union violence by the Wharton School published last year. In short, labor violence is too frequently an integral part of labor strike tactics that include premeditated efforts at intimidation through fear and violence. Further, this extortionate violence is part of a wide pattern that constitutes a serious national problem.

Your bill S. 462, together with my bill H.R. 287 and H.R. 1514 introduced by Rep. Phil Crane, each would amend the Hobbs Act to restore equity in the law, by assuring that the Hobbs Act is applied even-handedly to both union and non-union extortionate behavior.

Your hearings are vital in helping to alert the Congress and the public to the injustice of the current law and to the problems and brutality of union violence. Until current law is changed to restore equity, organized labor will continue view this loophole in the law as encouragement to engage in violence and in extortionate behavior virtually without fear of prosecution. I hope that members of your committee may conclude it reasonable to approve S. 462 without delay so that simple justice may prevail. I commend you for your courage and perseverance in pursuing these ends.

Senator GRASSLEY. At this point, I want to call our first witness, Mr. Walter Mungovan, who was a member of the carpenters' union for 13 years. In 1979, he and his wife, Cher, formed C&W Construction Co. on the island of Maui, HI.

Within its first year of operation, the construction company, formed by Cher and Walter, had 20 employees and was still going strongly. At that point, the carpenters' union in Hawaii began an effort to organize C&W's Construction employees by picketing their jobsites and advertising that the company paid substandard wages. It is my understanding that, in fact, the company paid its employees more than the standard union wage index.

An election was held and Mungovan's employees voted unanimously to remain nonunion. Under the section 8(b)(7)(b) of the National Labor Relations Act, that election should have ended the picketing, but instead picketing continued and saw the added pressure of sporadic violence and threats of violence.

In meetings with the union's officials, including the president of the Hawaii State AFL-CIO, Mungovan did tape record discussions with union officials. In those discussions, the extortion intent of the union officials became very clear.

However, as a result of the *Enmons* loophole in the Hobbs Act previously referred to in my opening statement, the labor leaders could not be prosecuted for extortion, but some of their admissions were in direct conflict with sworn affidavits that the officials had filed with the National Labor Relations Board.

Because of this, Federal officials have been able to successfully prosecute four union officials in Hawaii for perjury. But by providing key evidence of criminal wrongdoing, Mr. Mungovan placed his life in danger. So much so was that the case that he has been placed in a Federal Witness Protection Program for his own security. His new identity and location cannot be revealed to this committee nor to his own family who is also here today.

This Witness Protection Program is normally used to protect criminals who turn state's evidence, not to protect the innocent victims of illegality that become witnesses of the crime.

Mr. Mungovan is here with us today to tell us more about the extent to which union violence in which union officials were willing to use extortionate means to achieve their legal objectives and how well local law enforcement officials handled the problems of extortionate violence which the Federal Government is barred from prosecuting under the *Enmons* decision.

At this point, I would like to have you stay seated and raise your right hand and repeat this oath.

Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth so help you God?

Mr. MUNGOVAN. I do.

Senator GRASSLEY. Thank you.

With that, then, I would ask you to go through your statement. I want to tell you how pleased the committee is that you would come here and share your testimony with us, and also how brave you and your family have evidenced that bravery by coming here and leading the life that you do to pursue a cause that obviously is worth pursuing because of the necessary changes to bring credibility to legitimate collective bargaining labor union activity and management cooperation in this area.

So with that opening statement, I would now call upon you for your testimony.

STATEMENT OF WALTER MUNGOVAN, FORMERLY OF C&W CONSTRUCTION, MAUI, HI

Mr. MUNGOVAN. I was born Walter Michael Mungovan in Boston, MA. My name is now foreign to me outside of this hearing room. Walter Mungovan does not exist any longer in this world. In the past 1½ years I have seen my son Ian once, and my wife Cher four times in the confines of the Federal building during court trials. Today is a special day for me; just being able to see them for the time I am testifying.

In fighting the illegal organizing tactics of the Hawaii Carpenters Union, I was not only trying to protect my rights and those of my family, but also the rights of 20 employees. The same employees who had participated in a Federal election and unanimously voted to stay nonunion, even though I had hired some who were holding union cards away from other union companies.

My employees were happy with their work, their pay, their environment, working conditions, and with their coworkers who were made up of carpenters, laborers, and masons. And they were happy with me. Sure, I made them work hard, and I yelled at them when they did not, but there was not one employee I ever had who would say I treated them unfairly or without respect.

As hard as it was for my men to go to work through picket lines every day for 4 months, put up with threats to their families, harassment by picketers, and threats to their own lives, they all voted to stick together and continue working. If I was holding out for eventual justice for their benefit, they would in turn do the same for me.

Unfortunately, justice never came. Even though we repeatedly called police to our jobs to file terroristic threatening charges against the picketers, amongst other charges, they neglected to file all but three reports. In those instances my employees lives had been threatened and the reports were classified as harassment.

Police officers told us they did not want to file reports because some of the picketers were relatives or friends, or because they were members of the SHOPO police union and did not want trouble with another union.

The courts refused my pleas for an injunction to remove the pickets because the NLRB did not file any of my affidavits with the court, even though they had filed all those belonging to union business agents. Meanwhile I was told we had to wait 5 months for an NLRB administrative law judge to come and hear our charges of "unfair labor practice" against the union.

The county prosecutor would not prosecute any of the charges against the union filed with police because they were classified as misdemeanors. And of course, he can only prosecute charges that the police file which they had not done in our case. And yet, when one business agent convicted of perjury filed a terroristic threatening charge against me, the police filed the complaint and the prosecutor immediately wanted to prosecute me.

As difficult as it became to continue, I tried to finish my jobs. But one by one suppliers were refusing to deliver materials to my company, subcontractors refused to work on my projects, the electric company would not give me power, the building department decided suddenly that it would take 6 to 8 weeks to process my building permits, when previously I had got them in 48 hours.

When picketing began in January 1981 on three of my custom homes, I began taping my conversations with union officials. The union picketed me under the guise of protesting substandard wages, but they repeatedly asked, and demanded, that I sign a contract to employ only their members. They did not want my employees to join the union. I was supposed to sign a contract, lay off my employees, and rehire through the union hall.

I spent a great many years in the union, and although there are many members who went through the apprenticeship program for 6 years and became skilled journeymen in their trade, I personally saw too many men hired into the union as journeymen who were relatives or friends of someone in the higher ranks, who I would not have hired as apprentice laborers. I complained often as a union carpenter of having to work sometimes six stories off the ground with men who did not have the knowledge to be doing the job I was doing, and yet, they were receiving the same rate of pay I was.

As an employer, I did not mind what wages and benefits I had to pay as long as I hired the best men I could find in their trade, and I paid them accordingly. I also wanted men who were flexible because my company was not a commercial contracting company. We only built custom homes. My men were making a minimum of $12 an hour plus benefits, and others $15 an hour plus benefits in December 1980 when the union contacted me. Union carpenters then were making $11.05 an hour plus benefits. The men picketing my jobs were being paid $15 a day.

It was quite clear to me, and to the NLRB when I filed charges against the union, that I could not be accused of paying substandard wages.

In taping my conversations with union agents, they admitted they only wanted me to sign a contract, that they were in the process of waging a war to get all nonunion contractors to sign with the union, that they knew I did not pay substandard wages, and that if I signed a contract they would tell all my suppliers to start delivering to me again.

They also said that if I signed a contract and wanted to bid against nonunion contractors, which would not have been competitive, all I had to do was give them the names of the contractors bidding against me and they would go and shut them down under the guise of picketing to complain of substandard wages.

My only intention in taping them at the time was to protect my jobs. In one of my prior conversations with a business agent, he had threatened to torch another contractors job if he did not sign a contract with the union. He did sign soon afterwards. I was fearful that one of my jobs would be mysteriously burnt one night after I refused to sign, and without having either the threat of arson on tape, or an admission, I would have had no proof the union had done it.

As time went on it was clear that the conversations I taped did not prove arson but perjury, in connection with all the documents the union officials had filed in Federal court with the NLRB.

I gave the tapes to the NLRB as evidence for our third attempt to get an injunction, but the day Walter Kupau, head of the Carpenters Union, got copies of the transcripts he went to the NLRB and signed a settlement agreement to stay out of court, and agreed to stay away from my jobs for 30 days, retroactive. So after 4 months we still had not received justice.

I had by this time lost one of my large custom home jobs halfway through because the owners were afraid the union would burn their house down, and they were tired of pickets 6 days a week. I tried for 1½ years to get work but everyone said they were afraid to hire me for fear of picketing, threats, or trouble from the union. Contracts I had were canceled. I was the subject of bid rigging. Architects said they would not let me bid, or give me jobs for political reasons.

I had to put 18 men on unemployment 1 month after the picketing stopped for lack of work. Some of those guys have never worked in construction since because they had such a hard time finding anyone to hire them after they had worked for me. One man moved to the mainland after working on Maui solidly for 10 years because he could not get enough work after being employed by me.

And all of this was nothing but a concerted effort on the part of the Carpenters Union to put me out of business if I did not play the game their way. They finally succeeded. In the process, and over the last 3 years it caused us to go heavily into debt trying to pay bills, property payments, lawyers, et cetera. I had gone from basically having income, to no income, in what seemed like overnight, and yet I still had the same long-term expenditures.

The U.S. attorney's office could only prosecute the union officials for perjury. Regardless of other witnesses and evidence for other crimes, they were hampered in prosecution because of the existing language of the *Enmons* decision of 1978. Since March 1983, four union officials, including the head of the Carpenters Union, and in addition, an employee of a concrete company, have been found guilty and sentenced for a total of 21 counts of perjury in Federal court.

All of these men will spend less time in jail than it took in 1983 to hear two of their four trials, less time than I have been on the Witness Program so far. The lenient sentencing of Walter Kupau, head of the Carpenters Union and the president of the State AFL-CIO, was assured in part, I believe, because of the letters of support that were sent to the judge by Members of Congress and State legislators.

Since I took my evidence to the FBI and U.S. attorney in 1981, I have been the subject of death threats, which came in notes and on the phone, a bomb threat against my house, threats against my family, malicious damage to my vehicles, a reported contract on my life after testifying in the first perjury trial, and during one trial last year two men came to our hotel room posing as FBI agents saying they had to take me downtown. My wife had nightmares and did not stop shaking for two days over that incident.

These are just some of the events of the past 3½ years. And here I am today on the Federal Witness Security Program, just to keep me alive.

I fought an enemy in the jungles of Vietnam and I could have been one of the 58,000 guys who did not make it back home, but at least if I had died there I would have known who the enemy was, and I was in a war, even though it was a war nobody wanted. I have no intention of dying in my home country at the hands of persons who believe that they have a personal war of their own going on against nonunion contractors.

I have no intention of dying for the crime of exposing illegal tactics, threats, violence and crimes that I have personally witnessed in the State of Hawaii for the past 12 years, and certainly not for the ultimate crime of all—telling the truth.

I gave 3 years of my life to the U.S. Government 20 years ago. The Hawaii Carpenters Union has taken 3½ years of my life so far with this case, and there is no end in sight yet.

My only consolation is that I am alive on the Witness Program. Otherwise I have lost everything—my beautiful wife and son, my identity, my friends, my aging mother and my family, my business and assets I had built up from hard work—everything, and we are deeply in debt to attorneys for $100,000 to fight over $8 million of frivolous suits filed against us by the union, and a civil suit we filed against them.

The burden of all this worry has fallen on my wife, who in addition to bringing our case before Congress since June 1983, has been trying to raise funds to help with legal fees we are unable to pay.

My wife, Cher, gave a speech recently in Hawaii, and apparently a man came to her and said, "Look, being union is the way things are done here, if you do not want to conform to the system, get the hell out of this State."

This is typical of the union attitude in Hawaii, and many other places in this country. As employers we turn to those at the county and State level for protection and justice, and to the NLRB for violations of labor laws. But as in my case, and many others I am aware of, those local agencies either because of fear, pressure, political reasons, or personal allegiance with the union, do not want to deal with labor-management problems or violence.

The NLRB is a Federal agency and I expected fair treatment from them, but after the disasterous results in our case I learned that the head of the agency in Honolulu had himself had his life threatened by Mr. Kupau of the Carpenters Union during another case. All the information I was supplying him was being turned over to Kupau prior to going to the regional office on the mainland. So, employers are left waiting 5 months or more for a judge to come and listen to NLRB law cases, and meanwhile they are supposed to endure violence on their jobs, or comply with union demands.

Where are employers supposed to turn? The only place left is the U.S. attorney's office. My last resort. But they have their hands tied because of the *Enmons* decision. Perhaps it is the intention of Congress that employers like myself should not be able to chose where we want to live and do business, perhaps they think the unions are right, that their rights to force me to be a union employer by using threats and violence overrides my rights under the Constitution.

Although I am far from happy with the results of my experience in standing up for my beliefs, especially with the position I now find myself subject to, I would not change what I have done, and if I had to do it over again, I would.

Thousands of employers in this country, from large corporations to small businesses have been, and continue to be subjects of violence and threats by members of unions in order for them to extort contracts, conditions of contracts and money. Ninety-nine percent of these employers are too afraid to step forward and be counted, and as long as that situation exists, union officials will continue with violent tactics. One will always be attacked and bitten by the attack dog if one acts afraid.

In spite of the few examples and more that you have heard today of alleged union ties with organized crime in the State of Hawaii, our Governor, State Legislators, and Members of Congress, continually deny that there is a problem in Hawaii involving union officials and more so, any ties to organized crime.

It is more advantageous for these government individuals to portray Hawaii as a paradise in the Pacific in order to promote tourism, especially when most, if not all these officials enjoy very close ties to Hawaii's union leaders.

My father, the colonel, raised me to believe and live by the words: Liberty, justice, freedom, compassion, dignity, honor, generosity, respect for my fellow human being, hard work, and above all, truth. He raised me to honor and believe in the Constitution and the Bill of Rights.

Well, look where the truth got me. What happened to my civil liberties, my freedom, my rights?

I found they did not exist 3½ years ago when the union came to my jobs, and they do not exist for me today. I thank God the colonel is not alive today to see what the words this country was founded on have done to his patriotic son.

What is happening to our society when someone like me ends up on a Federal Witness Security Program just to be able to stay alive in this supposedly free country, while the criminals walk free on our streets?

Surely, it must tell people that something is terribly wrong with the law concerning this issue for me to lose my identity in this world for daring to speak out and tell the truth against union officials?

How can the lawmakers of this country, the men who occupy seats in Congress, ever justify to me, or to themselves, their refusal to vote for a change in the law that will put an end to this injustice, put the proper criminals behind bars, and allow me the freedom I deserve?

I volunteered my life for the United States of America, and I was proud because that was as much as I could offer. I do not think I am asking as much from my country in return.

Thank you.

Senator **Grassley**. Thank you, Mr. Mungovan.

I will turn to Senator Strom Thurmond for questioning since he is under time constraints. When he is done, I have several questions of you and your family.

Senator Thurmond.

POLICE AND COURTS UNCOOPERATIVE

The **Chairman**. Thank you very much, Mr. Chairman.

Mr. Mungovan, I want to commend you for your courage in coming here and testifying. I want to commend you for your dedication to law and order, and I want to commend you as an American for standing up for your rights as an American citizen—one who served his country in Vietnam, one who offered his life for his country, and one who is now trying to participate in the freedoms which our Constitution guarantees.

Now, I want to go back to page 1 of your statement. I believe you said that you repeatedly called police to your jobs to file terroristic threatening charges against the picketers, but they neglected to file all but three reports.

"In those instances my employees' lives had been threatened," you said, "and the reports were classified as harassment." What were those three reports you are speaking about?

Mr. MUNGOVAN. I am not exactly sure which ones they were, but they would come onto my jobs and threaten the lives of my men which is terroristic threatening, and I would call the police and I would demand terroristic threatening charges, and they would not do it. They would just put harassment charges down. So, therefore, they were not prosecuted.

The CHAIRMAN. In other words, although your employees' lives were threatened and you called the police, they did not respond?

Mr. MUNGOVAN. Yes, sir.

The CHAIRMAN. Is that correct?

Mr. MUNGOVAN. That is correct, Senator.

The CHAIRMAN. What police was that?

Mr. MUNGOVAN. That was the Maui Police Department.

The CHAIRMAN. In Hawaii?

Mr. MUNGOVAN. Yes, sir.

The CHAIRMAN. What did they say was the reason they did not respond and give you protection?

Mr. MUNGOVAN. Well, they said they were related to them, that they were friends, that they did not want to rock the boat, and they were also members of unions themselves.

The CHAIRMAN. In other words, the police had a union themselves and they did not want to have trouble with another union?

Mr. MUNGOVAN. Yes, sir.

The CHAIRMAN. Is that what they said?

Mr. MUNGOVAN. Yes, they did, Senator.

The CHAIRMAN. Now, you said the courts refused your pleas for an injunction to remove the pickets because "the NLRB did not file any of my affidavits with the courts." What courts refused your pleas for injunctions?

Mr. MUNGOVAN. The Federal courts.

The CHAIRMAN. The Federal court in Hawaii refused your pleas for an injunction?

Mr. MUNGOVAN. Yes, sir.

The CHAIRMAN. Why did you say they refused it?

Mr. MUNGOVAN. Because the NLRB attorney had filed all the documents for the union side of it but neglected to file any of mine.

The CHAIRMAN. You mean the NLRB with headquarters here in Washington, the National Labor Relations Board, filed the affidavits of the union and not yours?

Mr. MUNGOVAN. Yes, sir; basically the unions had the NLRB in their back pocket.

The CHAIRMAN. I believe you said you had to wait 5 months for an NLRB administrative law judge to come and hear your charges of unfair labor practices against the union?

Mr. MUNGOVAN. Yes; that is what I was told that we would have to wait 5 months.

The CHAIRMAN. So you could not get relief from the local police in Hawaii. You could not get relief from the Federal court granting an injunction, and you could not get relief from the NLRB. Is that right?

Mr. MUNGOVAN. That is correct

The Chairman. Now you said the county prosecutor in Hawaii would not prosecute any of the charges against the union, filed with the police. Why would they not prosecute?

Mr. Mungovan. Well, because the police would not bring up any charges against the unions. All they would bring up is a few harassment charges. Even though my men's lives were threatened and we had witnesses, they just would not do anything.

The Chairman. I believe you said the prosecutor even wanted to prosecute you.

Mr. Mungovan. Well, there was an alleged incident at one time that the union official said I pulled a gun on him, and I did not. I contacted the FBI immediately and asked for a polygraph, and the Maui Police Department would not give me a polygraph test.

The day I was put on the Witness Protection Program, then all of a sudden they said, "OK. We are ready for your polygraph," after I was already gone.

The Chairman. I believe you state here that you still tried to finish your jobs. These were housing jobs?

Mr. Mungovan. Yes, Senator.

The Chairman. You said, "One by one the suppliers refused to deliver materials to your company." Is that true?

Mr. Mungovan. That is true.

The Chairman. What excuse did they give?

Mr. Mungovan. Well, a couple of them said the union came and said that if they delivered materials to my job, that no union company would buy materials from them again.

The Chairman. In other words, the suppliers were told by the union that if they delivered supplies to you, that no supplies could be bought from them again.

Mr. Mungovan. That is correct.

The Chairman. And you say the subcontractors refused to work on your projects; is that correct?

Mr. Mungovan. Yes, it is.

The Chairman. What excuse did they give?

Mr. Mungovan. Well, they did not want any trouble with the union. They were all scared.

The Chairman. You say the electric company would not give you power. Do you mean the electric company, that serves the public generally, denied to give you power?

Mr. Mungovan. Yes, they did.

The Chairman. What excuse did they give?

Mr. Mungovan. They gave a bunch of excuses. To my wife this one man of the power company said, "We do not cross picket lines. We are union, too."

The Chairman. They do not cross picket lines. In other words, the electric power people had a union and they would not supply you power, although you wanted the power—offered to pay for the power?

Mr. Mungovan. Yes, sir.

The Chairman. You say, "The building department decided it would take 6 to 8 weeks to process your permits, although you had previously gotten the permits in 48 hours." Is that true?

Mr. Mungovan. That is true.

The Chairman. What excuse did they give?

Mr. Mungovan. They said they were too busy.

The Chairman. Did they say anything about unions?

Mr. Mungovan. No; I do not remember them saying anything about unions to me, they did mention them to my wife.

The Chairman. Now, I believe you stated. When the picketing began in January 1981 on three of your custom houses, you began taping the conversations with union officials. The union picketed you again under the guise of protesting substandard wages. Did they later admit you were not paying substandard wages?

Mr. Mungovan. Yes; they did. That is why they got convicted of perjury.

The Chairman. And they did not want your employees to join the union. Why?

Mr. Mungovan. Because they wanted to put their men to work.

The Chairman. In other words, you could not hire who you wanted to. The union wanted to use their own people.

Mr. Mungovan. That is correct.

The Chairman. And you would have had to layoff your own employees and rehire through the union if that had been done?

Mr. Mungovan. Yes.

The Chairman. I believe you said here, "I complained often as a union carpenter of having to work sometimes six stories off the ground with men who did not have the knowledge to be doing the job that you had and yet they were receiving the same rate of pay." How did they explain that?

Mr. Mungovan. They never explained it to me. They—the union—just said, "Do not rock the boat."

The Chairman. What wages were you paying? I believe you said here your men were making a minimum of $12 an hour plus benefits and others $15 an hour plus benefits in December 1980 when the union contacted you. Union carpenters were making $11.05. In other words, you were paying more than the union paid, is that right?

Mr. Mungovan. Yes, sir.

The Chairman. And the men picketing your jobs were being paid $15 an hour?

Mr. Mungovan. No; They were being paid by the carpenters' union $15 a day. Most of them were collecting unemployment.

The Chairman. I meant $15 a day, excuse me.

Although you were paying more than the union paid, they were complaining about your not paying as much, is that right?

Mr. Mungovan. Yes.

The Chairman. Now, I believe you stated here that it was quite clear to you and to the NLRB when you filed charges that you could not be accused of paying substandard wages.

Mr. Mungovan. Yes.

The Chairman. In other words, you paid more than the union paid.

Mr. Mungovan. Yes; I did.

The Chairman. And they picketed you because you did not enter into a contract with them and use their people.

Mr. Mungovan. That is correct.

The Chairman. Is that the whole thing?

Mr. Mungovan. That is it in a nutshell.

The CHAIRMAN. Now, in taping your conversations with union agents, they admitted they only wanted you to sign a contract. And did they say they were in the process of waging a war to get all nonunion contractors to sign with the union?

Mr. MUNGOVAN. Yes.

The CHAIRMAN. They did say that?

Mr. MUNGOVAN. Yes.

The CHAIRMAN. But you did not pay substandard wages. And if you signed the contract, they would tell all your suppliers to start delivering again.

Mr. MUNGOVAN. That is correct.

The CHAIRMAN. So all you had to do to get the cooperation of everybody was to sign the contract. They were trying to force you to sign the contract, although you were paying more than the union workers were receiving, is that correct?

Mr. MUNGOVAN. Yes.

THREATENED WITH FIRE

The CHAIRMAN. "Now, on another occasion, in one of my prior conversations with business agents, he had threatened to torch another contractor's job if he did not sign a contract." Did you have knowledge of that?

Mr. MUNGOVAN. Yes; I was there when he said it. He said it to me.

The CHAIRMAN. The agent was going to set fire unless the other contractor signed the contract?

Mr. MUNGOVAN. That is correct.

The CHAIRMAN. I have got to go open the Senate now.

Again, I want to congratulate you for being here. It is people like you who have the courage to stand up and come here and tell the American people what is happening in this country. Our forefathers came here seeking freedom. You have been denied your freedom here, and I hope we can pass this bill and protect the American working people.

Senator GRASSLEY. Thank you, Senator Thurmond. I appreciate your cooperation on this matter.

Again, Mr. Mungovan, before I begin my questioning, I want to tell you, of course, what you know better than we do that you should be very proud of your wife, Cher, and the way that she has conducted herself in your absence and during the many weeks and months she has spent before the Congress and with individuals here on the Hill on this Hobbs Act issue.

Her activity, in a large part, and her tenacity, it is these things that have lead to these hearings in which we have discovered such widespread violence in labor management disputes. You should be very proud.

Mr. MUNGOVAN. I am.

Senator GRASSLEY. I also want to point out, as I begin my questioning, that I am going to ask what may seem repetitive questions and some that may have even have already been answered in your testimony. To the extent that that is the case, I would ask your indulgence in that we are trying to make a record that is very clear and precise on the points of union activity taking advantage of Supreme Court mandated loopholes in the Hobbs Act.

My first question is another very obvious one but as I look at you, you are quite a large man. I understand somewhere around six foot seven.

Mr. **Mungovan**. That is correct.

Senator **Grassley**. You served in Vietnam. You stated that previously.

Mr. **Mungovan**. Yes; I was in the 1st Air Cavalry Recon Platoon of the 2d Battalion, 7th U.S. Cavalry Division.

Senator **Grassley**. You were a volunteer?

Mr. **Mungovan**. Yes; I was.

Senator **Grassley**. And you served in combat?

Mr. **Mungovan**. Yes; I did.

Senator **Grassley**. And you were decorated for your service in Vietnam?

Mr. **Mungovan**. Yes.

Senator **Grassley**. I do not mean to trivialize what has happened to you and your family but you do not strike me as the kind of a person that is easily intimidated, Walter.

Mr. **Mungovan**. No; I am not easily intimidated. In fact, most people seem to feel intimidated by me because of my size, but I believe that is one of the reasons the union went after me first rather than any other nonunion contractor—they had forced other nonunion contractors to sign contracts, but they were always doing commercial jobs, not homes.

If they could show the other homebuilders that they could force me to sign, given my size, I think the other contractors would have thought there is no way they could stand up to them.

Senator **Grassley**. Union officials must have been able to convince you that they had the ability to carry out those threats for you to pay any attention to them, did they not?

Mr. **Mungovan**. Yes; they did.

Senator **Grassley**. How did they give you the impression that they would carry out these threats?

Mr. **Mungovan**. Well, in addition to my personal knowledge of union officials carrying concealed weapons in the course of their everyday business, I am aware of other contractors who have had their projects burnt down while having disputes with unions and of others, and employees being shot at.

Senator **Grassley**. Then you were aware of their having carried out similar threats against others?

Mr. **Mungovan**. Yes, I was, and this has been going on for as long as I had lived in the State of Hawaii, which was 12 years.

Senator **Grassley**. And you were also aware of the past record of their violent conduct?

Mr. **Mungovan**. I certainly was. One of the officials convicted in our case was hired by Kupau as a business agent organizer, only 1 month after he had gone into the union hall office on Maui and threatened the life of another business agent who was later convicted of perjury with him.

Some of the officials I was dealing with had prior records of violence including threatening the lives of police officers.

Senator **Grassley**. Were you aware that they had business and personal ties with persons who had past records of violent conduct?

Mr. **Mungovan**. Yes; I was. As I just said, they themselves have records of the same type of conduct.

ORGANIZED CRIME INVOLVEMENT

Senator **Grassley**. Were you aware of any organized crime involvement with these people?

Mr. **Mungovan**. It is my belief that organized crime has always had ties or been involved in the operation of unions in the State of Hawaii. There did not seem to be elements of the Italian Mafia or Cosa Nostra, the American Mafia, although I could not be sure, but there are local factions, the Japanese controlled syndicate, the Yakuza element, which is the equivalent of the Mafia, if not worse.

You have just read of the indictments against Henry Huihui and 11 other people this morning in a letter from Chuck Marsland, the Honolulu prosecutor. Marsland's son was murdered a few years ago allegedly by the syndicate who were being investigated by Marsland.

But ever since I moved to Hawaii 12 years ago, Henry Huihui of the International Brotherhood of Electrical Workers has been a household name as far as the word on the street as being heavily connected with organized crime.

Blackie Fujikawa, who used to run the IBEW, was said to have had heavy ties with the Japanese Yakuza. He is dead now, but his successor, Gordan Yabui, was one of those indicted with Huihui.

Ben Madamba who was also indicted with Huihui had a brother who was murdered in an alleged underworld hit in 1977. He was supposed to have been killed over an organized crime war involving Huihui and another reputed underworld character named Alvin Kaohu.

There is supposed to be evidence linking the 1976 murder of Stanley Ota, a Honolulu contractor, to Harry Segovia, ex-official of the carpenters' union. His brother, Tom Segovia, has been indicted for another murder connected with organized crime along with a member of the drywallers union, which is part of the carpenters union.

In 1974, Royale Komahoahoa, who at the time was supposedly a driver for the reputed underworld leader, Nappy Palawa, shot Billy Mookini, who was an organizer for Art Rutledge, the head of the Teamsters Union, who has repeatedly been the subject of congressional and labor investigations.

Mookini was also connected with James Pokini, who had guns for-hire gang that existed in the 1970's. Kamahoahoa had previously worked for Josiah Lii, head of the Inland Boatmen's Union, as a strong arm. Kamahoahoa admitted in court recently to beating up employees who would not join the union, and said he had lied in the attempted murder trial in 1975 about shooting Mookini in order to get himself acquitted, which he was.

Lii was murdered gang-land style in 1977 supposedly by Huihui and others. Many of these people have prior convictions of illegally carrying firearms. Charles Higa, who has admitted to having close ties with the Japanese Yakuza, was recently found guilty of conspiracy and extortion. He used to be vice president of the largest guard firm in the State, whose president, Larry Mehau, has repeatedly been the subject of investigations by Marsland because of alleged syndicate ties. He is closely tied with the Governor and Hawaii's union leaders.

So yes, I would definitely say that I am aware of alleged organized crime involvement, as are other individuals in Hawaii, regardless of denials from the Governor, Hawaii Members of Congress, and members of the State legislature.

Senator GRASSLEY. The letter you referred to that I received from the Department of the prosecuting attorney for the city and county of Honolulu is from Charles F. Marsland, Jr, prosecuting attorney. That is the letter you are referring to?

Mr. MUNGOVAN. Yes, sir.

Senator GRASSLEY. I am going to submit that at this point in the record in its totality, but I would like to read two paragraphs at this point that I think are very pertinent to what you just said.

> As written, the existing Hobbs Act is the source of continuing problem for law enforcement which translates into inaction. Often, due to politics, inhibition or confusion, law enforcement will rely on the Hobbs Act to rationalize "looking the other way" when union officials and/or their representatives exploit the Act to engage in violence.
>
> Although it is common for community leaders and law enforcement representatives to maintain that there is no significant exploitation of the Hobbs Act, the facts nationwide suggest otherwise. While coordinated denials of wrongdoing can be convincing, when a case does surface quite another picture emerges.

I will have the entire letter in the record.

[The following was received for the record:]

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU
1164 BISHOP STREET, HONOLULU, HAWAII 96813
AREA CODE 808 ● 523-4511

CHARLES F. MARSLAND, JR.
PROSECUTING ATTORNEY

April 30, 1984

Members of Full Senate Judiciary Committee
Hearing on S.462 - The Hobbs Act Amendment
Sponsered by Sen. Charles Grassley

Dear Senators:

By way of introduction, I am the elected Prosecuting Attorney for the City and County of Honolulu in Hawaii.

I have put my thoughts on paper in hopes that they may be of some value to you as you consider S.462 - the proposed amendment to the Hobbs Act.

In Hawaii, a protective attitude toward crime and the criminal defendant permeates both our criminal justice system and our Legislature - rendering our government impotent when it comes to providing fundemental safety and security to our people.

Unfortunately, the determined couple who have focused your attention on the problem at hand - Walter and Cher Mungovan - are victims of that protective attitude. Hawaii residents are angered and ashamed by what has happened to the Mungovan family.

I would like to share some details of the Mungovan's nightmare with you from my perspective. A Vietnam war hero and building contractor, Walter Mungovan decided to go non-union when he set up his business on the island of Maui because his customized home-building business demanded employees who could be "jacks of all trades." When it became clear that Mungovan was firm in remaining non-union, he and his family were threatened - his automobiles were damaged - tools and equipment were stolen. Mungovan began tape-recording conversations between himself and union agents. After the FBI determined his life was in danger, he installed alarms around his home and was given a permit by the Chief of Police on Maui to carry a weapon.

Finally, when he agreed to testify against two union business agents in a perjury trial, the federal government placed him in their Witness Security Program. What that means, of course, is that he can no longer live on Maui with his wife and family. Instead, he's living elsewhere in the United States with a new name - living like a hunted animal. And there is the possibility that he will never be able to return home.

This sad story sickens me - not only because a family has been ripped apart and sent into hiding simply because they wanted to be independent - but also because this is precisely the type of corruption the lawmakers in Hawaii continue to ignore.

In every legislative session since I was elected Prosecutor in 1980, we have asked the State Legislature to provide funds for our Office to go after organized crime, white collar crime and public corruption. We have repeatedly lobbied for enlightened legislation which would allow prosecutors to get tough on crime and begin to offer the basic protection so richly deserved by the people of Hawaii. Unfortunately, the politicians in the state of Hawaii are more concerned about the defendant and the "good old boys" who run things here than they are about the safety and rights of those who want nothing more than to live and provide for their families in peace.

As written, the existing Hobbs Act is the source of continuing problems for law enforcement which translates into inaction. Often, due to politics, inhibition or confusion, law enforcement will rely on the Hobbs Act to rationalize "looking the other way" when union officials and/or their representatives exploit the Act to engage in violence.

Although it is common for community leaders and law enforcement representatives to maintain that there is no significant union exploitation of the Hobbs Act, the facts nationwide suggest otherwise. While coordinated denials of wrongdoing can be convincing, when a were convicted on nineteen counts of perjury for lying under oath on affadavits and in criminal trials about the union's attempts to sign up the Mungovans. In another related case an employee of one of Mungovan's suppliers was convicted on two perjury counts. One of the four union officials, Walter Kupau, head of the Carpenters Union in Hawaii and president of the AFL-CIO State Federation of Labor, was convicted of six counts of perjury. He was sentenced to two years in federal prison and fined $10,000. All of the above cases were in federal court.

Another union official awaiting trial here is Henry Huihui, a reputed underworld leader and officer and organizer for the International Brotherhood of Electrical Workers. Indicted by a grand jury in 1980, Huihui is accused of seven state felony counts of extortion, conspiracy, theft by extortion and gambling, in allegedly running syndicate operations on the Big Island of Hawaii from 1977-1979.

More recently, a federal grand jury in February returned a 21-count indictment against Huihui, charging him with running a crime syndicate from 1975-1981 that specialized in extortion and gambling. One indictment charges that Huihui extorted $50,000 from a contractor. He allegedly told contractors that he was responsible for the 1976 murder of Stanley Ota, a Honolulu contractor. He was also charged with the 1977 gangland-style murder of the head of the Inland Boatman's Union. Ten other persons, including the president of the IBEW, one member of the Drywallers Union, and ex-Carpenters Union official and other members of the IBEW were among those charged in the indictment - the first prosecution brought in this state under federal racketeering laws.

In March of this year my office sought and obtained murder-for-hire and murder indictments against Huihui and five others for the 1977 murders of labor leader Josiah Lii and David Rivera. Pending posting of $2 million bail, Huihui is presently in custody awaiting trial on these most recent charges.

What we need to deal with these particular types of atrocities in our nation that do not always fall under racketeering statutes, is an amended Hobbs Act. I urge all members of the Senate to pass S.462, sponsered by Sen. Charles Grassley.

Chas. F. Marsland Jr.
CHARLES F. MARSLAND, JR.
Prosecuting Attorney

CFM:mj

Senator GRASSLEY. What was the expressed purpose for the picketing of your company?

Mr. MUNGOVAN. Well, they told the general public it was to protest substandard wages because that is the only way they can picket an employer indefinitely.

Senator GRASSLEY. What was their genuine purpose?

Mr. MUNGOVAN. To get me to sign a contract, and if I did not, to put me out of business.

Senator GRASSLEY. When did you first experience force, violence or fear directed against you, your family and your company?

Mr. MUNGOVAN. In December 1980, when I met with a business agent and the subject of torching jobs came up. After that, it was January 1981 and continued until last year when I went on the witness program. After that, my wife still got phone calls saying I would be killed and she and my son received a threatening note in the mail earlier this year.

Senator GRASSLEY. By whom were these threats made, if you know who they were?

Mr. MUNGOVAN. Some of the threats that were made against me and my employees were business agents of the carpenters union. We do not know who sent the note in the mail or who was on the phone. It is my understanding that one of the men who came to our hotel room has been identified but the case is still pending.

Before I encountered problems with the union, I never had any threats made against me, no violence, no thought of fear, and I certainly did not have any enemies. The threats became worse after union officials were brought before the Federal grand jury and when it came time for the trials.

I believe the culprits were officials of the union or their associates.

Senator GRASSLEY. Did these people act with the knowledge, approval, or direction of any officer of a labor union?

Mr. MUNGOVAN. First, I firmly believe that they did act with the knowledge and approval of the head of the union, and second, in some instances, they were union officials.

Senator GRASSLEY. What was the expressed purpose of the force, violence, or fear directed against you?

Mr. **Mungovan**. The expressed purpose initially was to get me to sign a union contract. The purpose eventually was to try to get me to keep my mouth shut and to prevent me from testifying against them in Federal court.

Senator **Grassley**. Did it have its intended effect on you or others?

Mr. **Mungovan**. It had an effect immediately on my family, my employees and their families and my suppliers. I personally was extremely concerned about the threat of arson to my projects because of being responsible to the owners.

It took awhile longer for me to become fearful for my own life, perhaps because I had been exposed to the threat of death in Vietnam, but eventually it did affect me. Like I said before, being in Vietnam and knowing the enemy was all around you was a whole lot different from Maui, HI.

There I did not know who would be coming after me. Maybe someone I knew, the syndicate, the union, someone I trusted. There had been too many bodies found shot and dumped in the cane fields with no one ever finding out who did it, except to tie them to organized crime or the syndicate. I worried about being the next one.

Senator **Grassley**. At the time the incident occurred, did you or someone else contact the police or other local enforcement officials?

Mr. **Mungovan**. Yes; we called the police immediately after each incident.

Senator **Grassley**. What was the response of those local law enforcement officials?

Mr. **Mungovan**. First of all, it took the police sometimes an hour to show up after we had called them. Like I said before, they did not want to write reports because the picketers were relatives or friends or because they were in the police union and did not want any hassle or trouble with another union.

Other officers said they were writing reports and we later found out they had not done so. One officer told a union official on my job not to talk to me because I was carrying a tape recorder after we had called him to file a terroristic threatening charge against the same union official.

Senator **Grassley**. Were any arrests made?

Mr. **Mungovan**. Absolutely none. In fact, in all the incidents I am aware of where other contractors have tried to file or filed charges against members of a union, there have also been no arrests and no prosecutions.

Oh, I forgot. There was one my wife told me about, a union contractor on another island filed two assault charges against one of Kupau's bodyguards who is also a union official. The bodyguard had beat the contractor and his subcontractor. It took the contractor months to get police to file the report and finally with some pressure, the prosecutor did prosecute.

The guy pleaded innocent, but the day before going to court, pleaded guilty to one count, and the prosecutor dropped the other charge. He was fined by the State judge $25. It is nice to know you can go to Hawaii, beat up on a contractor, and all it is going to cost you is $25.

Senator GRASSLEY. Getting back to the use of force, violence, and fear against you, has anything been done at all to these people who did this to you?

Mr. MUNGOVAN. Besides five of them being convicted in Federal court on perjury charges, no, nothing has been done.

Senator GRASSLEY. And they are still out on appeal?

Mr. MUNGOVAN. One did not appeal and he went to jail for 60 days. Another had his appeal turned down and he is in jail. The other three are still out on appeal.

Senator GRASSLEY. Mr. Kupau still has his $80,000 a year job as business agent for the carpenters union?

Mr. MUNGOVAN. Kupau is financial secretary and head of the carpenters' union. He is paid $83,000 a year plus benefits. He still has his job while he is on appeal and he will still get paid the $83,000 while he is in jail when he eventually goes.

Senator GRASSLEY. His former assistant is now the acting president of the State AFL-CIO?

Mr. MUNGOVAN. One of his bodyguards, who is also president of the Building Trades Council and a union official, was assigned by Kupau to act as president of the State AFL-CIO last year.

Lane Kirkland spent 6 months trying to get Kupau to take a leave of absence until he was cleared of the perjury charges. Kupau basically told Kirkland to go jump in a lake. A few days before his sentencing when Kupau realized he could get 30 years in jail, he decided to act humble, to get sympathy, and took a temporary leave of absence.

So basically Kupau is still running the AFL-CIO through his bodyguard, as he calls him. Nothing has changed.

Senator GRASSLEY. I wish to note for the record at this point that union officials would be required to step down from their office following a felony conviction rather than as now when all appeals are exhausted, and that comes under a provision I authored as part of S. 1762, title VIII.

I would like to now ask you how far in debt you are as a result of all that you have told us about to this point and all that we know has transpired.

Mr. MUNGOVAN. Well, the exact figure, I do not know. Hundreds of thousands of dollars, including the assets we lost in the process, and of course, there is about $100,000 of that owed to attorneys.

Senator GRASSLEY. I understand that your own home underwent threat of foreclosure. Are you aware of how your family is doing at this point?

Mr. MUNGOVAN. I am not really sure.

Senator GRASSLEY. Does the Federal Witness Protection Program provide any sort of income or what we call stipend for your family?

Mr. MUNGOVAN. No; it does not.

Senator GRASSLEY. Is there a defense fund been built up to help you?

Mr. MUNGOVAN. Yes; there is one set up in Hawaii.

Senator GRASSLEY. What is the address of that fund?

Mr. MUNGOVAN. Post Office Box 365, Kihei, HI 96753.

Senator GRASSLEY. Do you ever expect to be united with your family again?

Mr. **Mungovan**. I expect to be united with my wife and son on the Witness Program after the lawsuits are finished. Right now someone has to be on the outside handling those. As to the rest of my family, no, I do not expect I will ever be reunited with them. It is not a very pleasant thought.

I would like to just say one thing. I have received nothing but respect from the U.S. attorney's office and the FBI throughout my entire dealings with them. I especially appreciate it from the FBI given the fact that the Honolulu office has the highest percentage of manpower utilization of any division in the Bureau in this country, running presently at 111 percent which should also intimate that, there are some serious problems in the State of Hawaii. Although the Witness Program is not designed for innocent people like me, the U.S. marshals have done everything they could to help me adapt to this way of life.

Senator **Grassley**. That completes my questioning of you, Walter. I want to thank you for coming, and I want to say one other thing, that in the process of my planning for these hearings, I had my staff contact a number of potential witnesses. Many of them, including some of this country's largest corporations have, of course, refused to come today. They are not here, and it directly relates to the fact that they are afraid to testify or even present written material for the record, and they refuse to do this out of fear of further union violence.

I just want to tell you that what you are doing has required a lot of courage and I want to commend you for that. Thank you very much.

Now, we would have you stay where you are and we would now go to the introduction of your son, Ian Mungovan. He is a 12-year-old son of Cher and Walter Mungovan. He is here to give us added perspective to the distructive power of the unchecked violence that can be directed against a family under current law.

Ian, would you proceed.

STATEMENT OF IAN MUNGOVAN, MAUI, HI

Master **Ian Mungovan**. My name is Ian. I am 12 years old and I live in Maui, HI.

I have not seen my dad, Walter Mungovan, since January 1983 except for a few hours in the marshal's office in Honolulu where he was a witness for the Government in a trial of union people. That was in November last year.

We had a happy family until the union people started going after my dad to put him out of business. I did not know really what was going on except that we used to get phone calls at the house threatening my dad, and one time someone told us they were going to blow our house up.

My mom came home in May last year after a big trial in Honolulu and told me my dad was never coming home again because he had gone on the Witness Program. People had been threatening him and other people had told us that someone hired a guy to kill my dad because he was testifying in court against the union.

My mom told me all the things that had happened for 3 years since the union came to my dad's jobs. She said we could go on the

Witness Program but if we did we could not go on with the lawsuit that they filed against the union to get back all the money they cost us for all the illegal stuff they did.

At home my grandma and grandpa live at the same house with us. Since my dad had problems with the union they have lent a lot of money to my mom and dad to pay bills and things. No one would hire my dad to build anything. People were afraid the union would make more trouble if they got him to work for them.

But now my grandma and grandpa are broke. They have no money and my grandma works so much that I do not see her hardly except on Sunday morning sometimes. But she has to work to earn money and she is supposed to be retired, but her and grandpa have to eat everyday and they need money for that. They look very sad all the time.

My mom went to Washington, DC, in June last year to ask the Senators from Hawaii to help us, but they told her to go home and see the mayor of Maui. Some of these union people cannot go to jail for threatening people because there is a law that says the Government cannot take them to court. It is called the Hobbs Act. I do not know what our mayor, Hannibal, has to do with any of that. He just runs Maui.

But mom went back to Washington in July and she did not come home until the middle of November. She was trying to change the law so that other kids do not have to live like me without my dad. I wrote her letters and I saw her on TV sometimes in the news. She was very lonely because she did not know anyone. A lot of Senators did not want to listen to anything about unions because I think when they get elected the unions give them a lot of money so the Senators do not want to get them all mad.

I have been going to see a doctor because my grades went down in school and because I was lonely. We do not have a family any more with my dad gone. I do not even know where my dad is because he has a new name and the marshals cannot tell us where he is living. I know he is lonely too.

I worry a lot about my mom because she has so many things to do all alone. She wants to get everyone in the country to know what happened to our family so they can call Senators in Washington and tell them to change the law. And she worries about the lawsuit because the bills are about $100,000 and we do not have the money to pay them. A little money comes to a post office box for a legal defense fund to pay the bills, but it is not enough to pay them all off. We have to get money from the lawsuit to pay back grandma and grandpa so grandma can stop working. She is too old to be working.

Some kids have fathers who died. Some kids have fathers who are in jail. None of those kids see their fathers but they know why. If they died, they died with their own name. If they are in jail they did something wrong and they still have their own name. And one day they will be out of jail.

My dad did not do anything wrong and I do not even know where he is and I do not know his name either. I do not know if I will see my dad again or ever have a family like we had before that was happy.

My mom told me about the Hobbs amendment. Maybe if there was a law like this when my dad had trouble with the union, he would not have to live like he is. I may be grownup before I ever see my dad again. I do not think I will look back and tell people I had a very happy childhood. I was nine when the unions came to our jobs.

I do not understand how this can happen in America. People are supposed to be free here, especially when they did not do anything wrong. It is not fair that my family went through all this stuff and the union people get away with crimes and do not go to jail. And they live happily forever.

I love my dad and I want my family back so we can live where we want to live, and he can build houses, and we do not have to worry about the union threatening us again.

I hope the Senators will change the law. Maybe if it happened to them and their kid was writing this they would vote to change the law. Right now I think there is something wrong with them if they agree with men who go around using violence against other people. I do not understand why people vote for men who let union people get away with such crimes.

But that is OK. My dad will go to heaven one day and they will not. God does not forget.

Senator GRASSLEY. Thank you. Now, it is my understanding that you did not write the statement that you have just given with the intent of testifying before the Senate committee. Is it not true that you wrote this for school?

Master IAN MUNGOVAN. Yes.

Senator GRASSLEY. Ian, how old were you when your father first began to have trouble with the union?

Master IAN MUNGOVAN. Nine.

Senator GRASSLEY. Did you understand what was going on at that particular time?

Master IAN MUNGOVAN. Not really.

Senator GRASSLEY. How old were you when you found out that someone had threatened to hurt your father if he did not go along with what the union wanted?

Master IAN MUNGOVAN. About 11.

Senator GRASSLEY. Did you ever hear anybody threaten him directly?

Master IAN MUNGOVAN. No, but my grandpa, we had a tape recorder, we had a recording machine at our house, and I heard a threat on our telephone.

Senator GRASSLEY. How did that make you feel when you heard that threat?

Master IAN MUNGOVAN. I could not believe it.

Senator GRASSLEY. How old were you at that time?

Master IAN MONGOVAN. Eleven.

Senator GRASSLEY. Does it bother you that your father cannot tell you where he lives or what his name is?

Master IAN MUNGOVAN. Yes.

Senator GRASSLEY. How hard has that been on you and your mother?

Master IAN MUNGOVAN. Well, we have had many problems with people always calling us up and threatening, and I have had lots of problems in school. I had straight A's, and I have gone down really a lot.

Senator **Grassley**. Do you expect that you will be able to have a normal life again sometime?

Master **Ian Mungovan**. Possibly.

Senator **Grassley**. Would you tell us how you feel about your father being gone because he testified against union officials?

Master **Ian Mungovan**. I do not feel that he did anything wrong. These people who are in Hawaii, they do not understand why he did it. He just did it so that we could live easier.

Senator **Grassley**. How does it make you feel that certain people who have caused problems for you are free pending appeal?

Master **Ian Mungovan**. It makes me sick.

Senator **Grassley**. What do you think of a law that allows someone to threaten the life of your father but not be prosecuted because they were union officers?

Master **Ian Mungovan**. Well, it is not really that great to have that kind of law. If it could be changed, then they could be prosecuted just as a regular American could be, a regular person.

Senator **Grassley**. That is the end of my questioning, Ian. I want to thank you very much for being brave, coming here to tell us the problems that your family has confronted from your standpoint, being a person denied having a father, and we would hope that before you grow up and are away from home, your family will be together again.

But in the meantime, we thank you for helping us with this project to bring change in this law so that things that have happened to your family will not happen to other families as well.

Thank you very much.

The next witness is Mr. Jerry Bartow, and he is owner of the Bartow Builders of Port Huron, MI. During construction of a manufacturing facility in the Port Huron area, several hundred picketers used force and intimidation to prevent Bartow from doing business without their union's members in his employ. He is here to give us added perspective of the construction trades violence in the Great Lakes region.

Before you start your testimony I would also like you to take the oath. Would you raise your right hand? Do you swear that the testimony that you are about to give is the truth, the whole truth and nothing but the truth so help you God?

Mr. **Bartow**. Yes, I do.

Senator **Grassley**. Thank you. Proceed with your testimony.

TESTIMONY OF GERALD BARTOW, BARTOW BUILDERS, PORT HURON, MI

Mr. **Bartow**. Mr. Chairman, thank you for allowing me to have the opportunity to appear before your committee this morning. My name is Jerry Bartow and I am the owner of a small general construction firm in Lexington, MI. I have been an open shop contractor in Michigan for 8 years. I am also a member of Associated Builders and Contractors, a national construction trade association. In the past, I have built small commercial buildings, custom homes, and renovations. With the housing market as slow as it has been, I have tried to change my business field to include larger industrial buildings.

On May 10, 1983, I was awarded a contract to build a 40,000-square-foot plant expansion for the U.S. Manufacturing Corp., at their Port Huron plant which is located in the Port Huron Industrial Park.

After beginning the job on June 22, 1983, a group of eight men entered my job site on June 29 who represented local unions—carpenters, bricklayers, cement finishers, laborers, operation engineers, and rod busters. These business agents wanted to know if I were willing to unionize and hire my people all out of the hall. I assured them I had all the good help I needed and I did not need to sign with the unions. They told me they would return, which indeed they did, with a picket line and trouble.

For the next 2 months violence and threats escalated; my job was essentially shut down. Material deliveries were limited to those which I brought in during the night in numerous midnight convoys. During this time I lost many suppliers and subcontractors, with the exception of the ABC members who were also subcontractors. Several of my employees also quit because of the threats against them and their families. After the Port Huron police learned of bomb threats against me, they informed the sheriff's department who moved my wife and children out of my house to safety. I spent the night in a lawn chair in my front yard cradling a shotgun in my arms.

In the early days of the picketing the local police were on my job site only when I called for help and then did nothing except try and keep things from getting out of hand. Initially, no arrests were made even though my right to free and uninterupted use of public highways and streets was violated. The pickets would block the drive-in entrance to the construction site. You had to drive through the crowd and push them ahead of the trucks. The local police did not clear the entrance; they were outnumbered 10 to 1 and the pickets had no fear, let alone respect, for the officers. The State police were called on August 19, 1983, and for the first time in 9 years in Michigan responded to a labor violence situation. They remained on the job site for only 1 day and then withdrew in the face of union charges of undue force. We obtained injunctions limiting the number of pickets on August 17 and August 22, but they had no effect and were binding on only three of the unions—Laborers Local 436, Iron Workers Local 25, and Carpenters Local 1067.

As the violence escalated and the number of pickets increased, the local police were put on 12 hour shifts and worked around the clock. They attempted to do a job, but were woefully outnumbered. City officials pleaded with the Governor's office to send the State police back, but had no luck.

The matter finally came to a head on Tuesday, August 30, 1983, when 700 to 1,000 picketers arrived on buses, attacked the local police, tore down the 6-foot-high fence surrounding the entire site, did over $100,000 damage and trapped seven of my workers and myself on a roof for 5 hours. The State police had again been called at 9 a.m., but did not arrive until 4 p.m. and remained five blocks away from the job site at an armory [illegible]

BEST COPY AVAILABLE

others. Even though police from five departments in the Port Huron area were on duty at the site, they were no match for the hundreds of picketers. The State police were of no value since they remained five blocks away at the armory. They were afraid to become involved despite the extreme damage to my equipment and materials at the site and despite the fact that 8 of us were being threatened by 700 to 1,000. Mr. Chairman, without Federal assistance to overcome local intimidation, contractors like myself and owners like U.S. Manufacturers will not be able to continue in business.

I firmly believe that if labor violence were a Federal offense, and immediate action had been taken, this situation would never have escalated to the point that it did. If Federal law enforcement agencies could move in and assist local authorities or, if necessary, take over, I think that the violence and destruction could have been substantially reduced. I was left with legal bills totaling in excess of $40,000; this amount will take years and years for me to absorb, but I will, because I am a survivor.

My marriage was hurt during this unrest; my daughters, ages 10 and 8, will never forget it. My life will go on and I will try to rebuild my business and my faith in the law and the ways of the judicial system, but some people could not hold up under this pressure. My life and my family, as well as my business, could have been ruined and that is just not fair or even close to the American way or what I believe, or did believe, it to be. Something has got to be done so that other people do not have to be put in this same situation.

I plead with the members of this committee to force responsible action in these situations and prevent damage, violence, and individual physical harm by enacting an appropriate Federal statute.

Senator GRASSLEY. Thank you very much for your testimony, and I would also like to express the regret for the committee for the experience that you had and the tremendous cost it is to you both economically and personally, but your being here to share with us your concerns about what the law is and to tell us personal problems you have had will help us in many ways to bring about the change in the law so that there will be fairness to people like you who could not seek or who did seek and did not receive the proper protection from local people.

I have many questions to ask you. Some of the questions I ask may sound repetitive as with the previous witness. I would ask your indulgence that we are trying to eliminate any ambiguity from what might appear in the record. So that is the purpose of maybe repeating.

Also let me suggest to you that if you would find it difficult at this point to answer certain questions that I would direct to you orally, you would have the opportunity to submit in writing answers to the questions. That could be from either the difficulty of your answering those questions right now or it might also come from the fact that you do not have the information that you might need to answer those questions.

So I want you to know that if you would like to answer in writing just say to me that you would like to answer that question in writing. We would ask that you have the answers submitted, though, within 15 days so we can close the record at that point.

Mr. Bartow, in fact, as I think you indicated, but I want to be more specific, there was an attempt by State political authorities to get the people that were arrested released without charges, is that true?

Mr. BARTOW. Yes, sir.

Senator GRASSLEY. And, in fact, local law enforcement authorities actually forced you to stop working on one occasion under instructions from State political authorities?

Mr. BARTOW. Yes, sir, they did.

Senator GRASSLEY. What was the expressed purpose of the picketing that your company experienced during the summer of 1983?

Mr. BARTOW. They wanted me to unionize. There were no and's, if's or but's about it.

Senator GRASSLEY. You say then that their purpose was solely to get you unionized?

Mr. BARTOW. Yes.

Senator GRASSLEY. They did not use any other excuses that maybe they stated publicly?

Mr. BARTOW. No.

Senator GRASSLEY. When did you first experience the use of force, violence, or fear directed against you, your employees and your company?

Mr. BARTOW. It started the first day of picketing which was on June 29, 1983.

Senator GRASSLEY. By whom were these acts committed?

Mr. BARTOW. The local building trades and their business agents, their carpenters, laborers, bricklayers, iron workers, et cetera. They were all involved in it.

Senator GRASSLEY. Were some of the people that used force, violence or fear against you and your company officers or employees of the labor union?

Mr. BARTOW. Yes, they were.

Senator GRASSLEY. Were these acts committed with the approval, knowledge, and authority of officers of the union?

Mr. BARTOW. I would say that to answer that, I would say that it was organized and that they knew about it. Whether they would admit to the act, they would probably lie, which they did all during the summer.

Senator GRASSLEY. What was the purpose of the force, violence and fear that was directed against you?

Mr. BARTOW. To shut down the job so that I would not be able to finish and that the owner would have to hire somebody out of the union to come in and finish it.

Senator GRASSLEY. Do you think the purpose was to frighten you into complying with the union's demands out of fear for your safety and the safety of your employees, family, and property?

Mr. BARTOW. Yes, I do.

Senator GRASSLEY. Did it have that effect on you and others that it intended to have?

Mr. BARTOW. Yes, it did. I lost four of the people that were working for me because they just could not put up with it any more.

They would rather be without work than to have to work and be put in that situation.

Senator GRASSLEY. At the time of the violent incidents when this all started, did you or someone else contact the police or other local law enforcement officials?

Mr. BARTOW. Yes, sir, I did.

Senator GRASSLEY. What was the response from the local law enforcement officers?

Mr. BARTOW. Well, when they were out there, I would call them up and tell them that there was 40 or 50 pickets out there, and they were throwing rocks and sticks and everything else at us.

And the first thing they would ask was "Was somebody hurt?" I says, "Well, nobody was hurt but sooner or later somebody will be." And they said, "Well, we will send a car over to see what we can do," and the car would just ride by and they would not even pull in. As it went on longer and longer they began to have them stay right at the site. But when it first started out, I think that the police really did not want to do anything, and they were just kind of hoping that the whole situation would just end and that I would just leave and let the unions win out.

Senator GRASSLEY. Were any arrests made?

Mr. BARTOW. On the day of the riot, as I call it, on a Tuesday, I believe August 30, there was 12 arrests, and that was only after the number of pickets had dwindled down to a point where the police thought they could handle it.

During that time earlier, they were just all witnesses of all the violence and rampage that the union people wanted to do. They did not try to apprehend anybody. They did lock up two union people when they first came through the fence and left. They locked up two of them in our office trailer we had.

When the rest of the picketers heard of this, they all came back in, all of them, and they literally told the police that if they did not give them back their people, they were going to rip their heads off. That was almost a direct quote of what they told the police, and the police did let them go.

Senator GRASSLEY. Did you actually have as many as 400 picketers at one time?

Mr. BARTOW. I would say there was a thousand picketers; 400, we had that on easy days there. The day of the riots there was at least a thousand of them there. The whole site was completely people. To count them would be an impossible task. You could take a section of them and count 200 people, and that was just the head of a pin you might say compared to how many that were there. I would say there was at least a thousand there.

Senator GRASSLEY. Has anyone been prosecuted?

Mr. BARTOW. The 12 that were arrested I believe that most of them have been prosecuted, all but 1, and they could not make a positive identification on him, but the ones that they did prosecute were all for, I would say that over half of them, were for malicious destruction over $100, and all they received was a fine of $111.

There were some that were going to be fined up to $2,000 but that does not even cover a portion of the damages that they did.

Senator GRASSLEY. That is my last question.

Mr. **Bartow**. Sir, I have a letter here. It is from the chief of police of the city of Port Huron with his feelings on the whole situation this summer.

Senator **Grassley**. That will be printed at this point in the record.

[The following was received for the record:]

City of Port Huron
Municipal Office Center 100 McMorran Blvd Port Huron, Mi 48060 — (313) 987-6000

April 27, 1984

To Whom It May Concern:

From August 16 through September 1, 1983, the Port Huron Police Department found itself in a very serious situation involving Jerry Bartow Contractor and the trade unions of the State of Michigan.

A commercial addition was being built in the industrial site in the City of Port Huron when trade union demonstrators were picketing in this area. At times the estimated number of picketers ran from 500 to 1000 people. The demonstrators were brought in by chartered buses from other construction sites in other parts of the State of Michigan. Clubs, bricks and rocks were observed. Our intelligence told us that some of these demonstrators were armed. It became necessary for the Port Huron Police Department to cancel all leaves and vacations, put all personnel on twelve-hour shifts and ask for assistance from other law enforcement agencies within our county as well as from surrounding counties. It even became necessary to contact the governor's office requesting further assistance. When a police department needs assistance, it is my opinion that it needs it immediately. The steps that are involved in getting aid from a state organization takes a minimum of about eight hours. We found that our officers were at a breaking point and our commanders had some difficulty in controlling them, as our officers wanted to "battle it out". This gives you some idea of the situation we had from August 16 through September 1 when professional police officers want to battle.

Numerous arrests were finally made when the demonstrators got out of control, starting to damage equipment, tear down fences, causing thousands and thousands of dollars in damage. The cost to the Port Huron Police cepartment and the taxpayers of our community for overtime paid in our department only was in excess of $67,000. Our local prosecutor and local judges refused to release or set immediate bond on all the arrests due to political pressure. All of those arrested, with the exception of two (one who passed a polygraph test and another that our officer could not positively identify), have all been found guilty or pled guilty.

I am very strongly supportive of any legislation that would place union violence under federal jurisdiction. I submit this letter with all due respect to all individuals who will review it.

Sincerely,

PORT HURON POLICE DEPARTMENT

Joseph L. Eastwood

Joseph L. Eastwood
Chief of Police

JLE/dg

Senator GRASSLEY. I want to thank you, Jerry, for coming here to Washington to share with us your problems, and I know you come here with a hope that the Congress will address this issue as previous witnesses have so done, and you come also distraught that things that happened to you could happen in this great country of ours.

Practically all of us believe in free and calm collective bargaining if a majority of the workers and the management agree to it, but we do not believe in the threats that go along, and the solving of this problem, I think, is very basic to the establishment of the credibility of the collective bargaining process and the right of people to join or not to join unions.

We all call upon responsible union leaders to see that things like this do not happen in the future, but understanding there are always a few exceptions to every good movement in this country, I think we have ample evidence that in order to calm the fears of the people of this country that instances like yours can be repeated and to calm the fear that violence is going to rein to a greater extent in union activity and in collective bargaining and dispute settlement, we must, in this Congress, change this law so that the Federal Government will be able to have the police power of the Federal Government follow the Federal law that has usurped from local and State law the governance of collective bargaining and labor relations.

I think we have ample evidence from the testimony that in too many instances the authority of local law enforcement is top often intimidated and the responsibilities are not carried out because of local political pressures.

These local law enforcement people sometimes find themselves in an impossible position to do a job that they would like to do or too often authority on high under political pressure may not want to respond as the oath of their office would dictate that they respond.

Hence this legislation. Really to do nothing more than what was originally intended in 1946 by the Hobbs Act that labor and management would be denied the use of extortion in collective bargaining and that they both be treated equally.

The Hobbs Act is still applicable to management, but because of that five to four decision by the 1973 Supreme Court in the *Enmons* case, it is not applicable to unions. We now have ample evidence that the Supreme Court was wrong, and it is now necessary for the Congress to change that.

We want to thank you for your contribution to making a record that will make it amply clear that that five to four decision of the Supreme Court in 1973 was not good for collective bargaining and good labor relations in this country and our effort to change it is to reestablish the credibility of that negotiation process.

So I want to thank you for helping us in this process, and I want to say to you as well as all of the observers who were so kind to help us through the mechanical problems that we had hearing from a witness whose identity could not be made known for all of the problems that you had to confront in attending this hearing today.

So for now I will recess this hearing. Tomorrow we will continue these hearings at 10 a.m., in this very same room. We then hear from a diverse group of witnesses including the FBI, the AFL-CIO as well as a victim of labor violence.

The committee now stands in recess until 10 a.m. tomorrow.

[Whereupon, at 11:55 a.m., the committee adjourned, to reconvene at 10 a.m., May 1, 1984.]

LABOR VIOLENCE AND THE HOBBS ACT—S. 462

WEDNESDAY, MAY 1, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:12 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Grassley (acting chairman) presiding.

Also present: Senators Biden and Specter.

Staff present: Lynda Nersesian, chief counsel and staff director; Terry T. Campo, counsel; and Veronica Gonzales, legislative aide, Subcommittee on Administrative Practice and Procedure.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. I apologize for being late. I just came from a news conference in which members of the business community were coming on board on my freeze proposal on the budget and obviously that has some priority right at this point. I want to thank you very much for waiting.

Today we are going to conclude our set of hearings on union violence and the Hobbs Act with particular attention being paid to the need to reverse the *Enmons* decision that exempted such violence from the Federal extortion law.

I want to stress as I did at the outset of the hearings that this is not an antiunion hearing nor is S. 462 an antiunion bill. We are opposed to violence, not unions and not working people.

For 10 years I was, as I have said so many times before these hearings, a member of the International Association of Machinists and participated in union activity. The people that I knew and worked with believed that a lawful strike was their best weapon, both because they were able to deny the employer the benefit of their labor and because a peaceful strike had the added pressure on an employer of enlisting community support for the strike.

The people that I worked with belonged to—in the union did not believe that they had a right to resort to actual violence and property damage as part of the bargaining process. The people who do believe that violence is their right, of course, do working people a great disservice.

They impugn not only the integrity of the working people who belong to good unions, but impugn their own cause as well. I also want to stress that not every case of strike violence is an example of a union going overboard in its desire to win benefits for its members. I have learned quite recently of a case in Lexington, KY, in which an employer and a union conspired to put the employer's nonunion competitors out of business by means of arson, and they did this under the cover of legitimate union activity. A conviction was obtained in that case because the court found that putting the competitors out of business for the benefit of the employer was not a legitimate union objective under the Hobbs Act. Presumably, this conviction will be appealed.

This indicates to me just how dangerous it is to have any group of people in this country exempt from the same law as the rest of us.

There has also been an attempt to expand the *Enmons* rationale to other Federal criminal laws and thereby to exempt union violence from other laws. So far those efforts have been unsuccessful.

Today we will hear diverse views from Members of Congress, the FBI, the AFL-CIO, and victims of union violence. It is my hope that prompt Senate action will ensue.

First, I wish to place a statement by Senator Denton in the record.

[Statement follows:]

STATEMENT BY THE HONORABLE JEREMIAH DENTON

I THANK YOU FOR THE OPPORTUNITY TO EXPRESS MY CONTINUED SUPPORT FOR S. 462, A BILL TO ADDRESS THE SUPREME COURT'S MISTAKEN INTERPRETATION OF THE HOBBS ACT IN ITS 1973 DECISION IN UNITED STATES V. ENMONS, 410 U.S. 396. THAT MISINTERPRETATION HAS ALLOWED UNION MEMBERS TO ENGAGE WITH IMPUNITY IN VIOLENCE AND THREATS OF VIOLENCE IN THE NAME OF PURSUING "LEGITIMATE" UNION GOALS. MR. CHAIRMAN, I COMMEND YOU FOR SPONSORING LEGISLATION TO CLOSE THE LOOPHOLE IN THE HOBBS ACT, AND FOR HOLDING A VERY INFORMATIVE SERIES OF HEARINGS.

MR. CHAIRMAN, RECENT TESTIMONY BEFORE THE COMMITTEE REVEALED THAT, DURING THE PAST FIVE YEARS, AT LEAST 3,350 ACTS OF VIOLENCE HAVE BEEN COMMITTED BY UNION MEMBERS. THOSE ACTS OF VIOLENCE WERE NOT ISOLATED TO ANY ONE AREA OF THE COUNTY BUT HAVE BEEN NATION-WIDE IN SCOPE. IN FACT, SINCE 1976 THERE HAVE BEEN 48 INCIDENTS OF UNION VIOLENCE IN MY HOME STATE OF ALABAMA.

ONE INCIDENT OF UNION VIOLENCE INVOLVED THE INJURY OF TWO YOUNG MEN IN A DISPUTE ON A PICKET LINE AT BIRMINGHAM MANUFACTURING CO., IN SPRINGVILLE, ALABAMA. RUSSELL RAY GILLIAN OF PELL CITY, ALABAMA, WAS SHOT IN THE FACE WITH A GUN OF AN UNKNOWN CALIBER WHEN HE REPORTEDLY CONFRONTED PICKETS AT THE PLANT. ROGER LEE PATTERSON, A WORKER FROM SPRINGVILLE, ALABAMA, WAS SHOT IN THE ARM. THERE WERE OTHER EXAMPLES OF UNION VIOLENCE AT THE BIRMINGHAM MANUFACTURING CO. PLANT DURING THAT STRIKE, INVOLVING HARRASSMENT OF COMPANY WORKERS, PROPERTY VANDALISM IN THE FORM OF SMASHED WINDOWS, DAMAGED CARS, TACKS THROWN IN DRIVEWAYS, PUNCTURING OF TIRES, FIRES, AND THE LIKE. I ASK UNANIMOUS CONSENT THAT TWO NEWS ARTICLES DETAILING THOSE EXAMPLES OF UNION VIOLENCE BE INSERTED IN THE RECORD OF THE HEARING.

MR. CHAIRMAN, THANKS TO THE LOOPHOLE CREATED IN THE HOBBS ACT BY THE SUPREME COURT, FEW OF THE INCIDENTS OF UNION VIOLENCE RESULT IN PROSECUTION. S. 422, WHICH I HAVE JOINED WITH TWENTY OTHER SENATORS TO COSPONSOR, WOULD CLOSE THAT LOOPHOLE BY

ALLOWING CRIMINAL PROSECUTION OF INDIVIDUALS INVOLVED IN VIOLENT, EXTORTIONATE LABOR UNION TACTICS. IT WOULD ALLOW FOR THE PUNISHMENT OF INDIVIDUALS WHO USE OR THREATEN THE USE OF FORCE OR VIOLENCE DURING STRIKES OR SIMILAR UNION ACTIVITIES.

MOREOVER, PASSAGE OF THE BILL WOULD CORRECT THE CLEAR IMPLICATION OF THE ENMONS DECISION THAT THE LEGITIMACY OF THE ENDS SOUGHT BY UNION AGENTS -- CONTRACT CONCESSIONS -- EXEMPTS THEM FROM PROSECUTION UNDER THE HOBBS ACT FOR THE USE OF WANTON DESTRUCTION AS A MEANS TO FORCE EMPLOYERS TO ACCEDE TO THEIR DEMANDS. IF WE FOLLOW THE "ENDS JUSTIFIES THE MEANS" RATIONAL OF ENMONS, WE IN EFFECT CONDONE THE SYSTEMATIC DESTRUCTION OF PROPERTY AND THE MAIMING OR KILLING OF INNOCENT INDIVIDUALS IN ORDER TO OBTAIN HIGHER WAGES OR BETTER FRINGE BENEFITS FOR UNION MEMBERS.

THE LEGISLATION WOULD NOT INTERFERE WITH THE RIGHT OF WORKERS TO STRIKE FOR HIGHER WAGES. ITS PROVISIONS WOULD COME INTO EFFECT ONLY IF A STRIKE GOES BEYOND THE MERE WITHHOLDING OF LABOR TO INCLUDE ACTIVITIES SUCH AS SHOOTING, DYNAMITING, AND ARSON DIRECTED AGAINST EMPLOYERS AND NON-STRIKING WORKERS. S. 462 EXPLICITLY EXEMPTS MINOR INCIDENTAL INCURSIONS. THE FACT THAT THE ACTIONS OF A DEFENDENT CAUSED ONLY A MINOR BODILY INJURY, OR MINOR DAMAGE TO PROPERTY NOT EXCEEDING $2,500, WOULD BE AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THE BILL.

MR. CHAIRMAN, I CONTINUE TO BELIEVE THAT THE LEGISLATION CONSIDERED TODAY BY THE COMMITTEE IS OF PARAMOUNT IMPORTANCE. I COMMEND YOU AND ALL THE OTHER MEMBERS OF CONGRESS WHO ARE ENDEAVORING TO FREE THE WORKPLACES OF OUR NATION FROM VIOLENCE.

WE NEED THE PEACEFULNESS THAT THE LEGISLATION WOULD BRING. WE NEED TEAMWORK AND COOPERATION IN THE WORKPLACE, NOT EXTORTION AND VIOLENCE.

THANK YOU, MR. CHAIRMAN.

ST. CLAIR NEWS-AEGIS
Pell City, Alabama
BI-WEEKLY

1326

OCT-2-83

V3682

Two hurt in Springville picket line dispute

118

By LOU ANN RAY
News-Aegis Writer

Two young men were injured Wednesday night in a dispute on a picket line at Birmingham Manufacturing Co. in Springville, according to St. Clair Co. Sheriff's Department reports.

Russell Ray Gillian, 21, of Route 2 Box 484 Pell City was shot in the face with a gun of an unknown caliber when he reportedly confronted picketers at the trailer manufacturing plant. Also injured was a co-worker, Roger Lee Patterson, 20, of Route 1 Box 323 Springville. He was shot in the arm and is listed in satisfactory condition at St. Clair County Hospital, according to a hospital spokeswoman. The condition of Gillian could not be obtained, but a sheriff's department spokesman said he was transferred to University Hospitals in Birmingham.

Both Patterson and Gillian are employed as welders at the factory. The shooting reportedly occured at about 7:30 when Gillian and Patterson returned to the company after they had left from work. Patterson had found some tacks in his driveway when he returned from work Wednesday, according to St. Clair County Investigator Richard Smith. Smith said Patterson and Gillian were taking the tacks back to the picket line.

When they arrived, tacks were thown at the men, Smith said, and a picketer yelled "He's got a gun." Two shots were reportedly fired at Gillian and Patterson.

No arrests have been made. The incident is being investigated by the sheriff's department and the Springville Police Department.

Eighty-four members of United Steel Workers Union 7832 walked off their jobs in early May in a dispute primarily centered around insurance benefits. "There is nothing to indicate it (the strike) will be at an end at this point," Plant General Manager Richard Norman said. Norman declined to make comments about the shooting.

The Wednesday shooting was not the first incident of violence since the 20-week-old strike began. Problems reportedly began occuring after management ran advertisements asking for permanent workers interested in replacing strikers. Violence occured at the plant on several occasions, two of which two union men were charged with harassment early in the strike and four picketers were arrested in connection with smashed car windows that resulted in a shoulder injury to one man, according to earlier reports.

THE ANNISTON STAR
Anniston, Alabama
DAILY

1326

SEPT-30-83
AY5683

St. Clair men injured near picket line

The Docket

SPRINGVILLE — Authorities said this morning they didn't know who fired the shots that wounded two St. Clair County men Wednesday night during a picket line disturbance between striking workers and non-strikers at Birmingham Manufacturing Co. in Springville.

St. Clair County sheriff's deputy Richard Smith said Roger Lee Patterson, 20, of Springville and Russell Ray Gillian, 21, of Pell City were wounded in a quarrel with striking workers. Both men had refused to join striking workers at the plant, Smith said.

Gillian, wounded in the face, was in good condition this morning at University Hospital in Birmingham, a hospital spokesman said. Patterson, wounded in the arm, was in good condition this morning at St. Clair County Hospital, a spokesman said.

Smith said he wasn't sure who fired the shots. There were "a number" of picketers on the picket line when the shots were fired at about 7 p.m., Smith said. Gillian and Patterson had already left work but had returned to the plant when the incident happened, Smith said. He wasn't sure why the men returned, he said.

During the "disturbance," someone fired "two or three shots," wounding the two men, Smith said.

Workers at Birmingham Manufacturing have been on strike since they walked off their jobs May 9 in a dispute over insurance benefits, Smith said.

Several disturbances have broken out between strikers and non-strikers in the past few months, Smith said.

Senator GRASSLEY. I want to now take the opportunity to introduce two Members of the House of Representatives that are here. They happen to be very distinguished Members of the House of Representatives. They are also sponsors of companion bills in the House that are aimed at restoring Federal jurisdiction over labor violence; the Honorable Phil Crane has represented Illinois in Congress since winning a special election in 1969. He is a former college professor and one of the most articulate Members of Congress. In 1980 Congressman Crane, of course, was a candidate for President of the United States.

The Honorable Thomas Bliley is in his second term as a Member of Congress representing Virginia. He is a former mayor of Richmond, VA, and served on the board of the National League of Cities prior to his election to Congress. These distinguished gentlemen are here today because they have conducted their own study of the problem of strike-related violence and the inadequate Federal response to it.

I would presume that we ought to go in the order of seniority, so I would call on you, Mr. Crane.

STATEMENTS OF HON. PHILIP M. CRANE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND HON. THOMAS J. BLILEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA.

Mr. CRANE. Thank you, Mr. Chairman. I appreciate this opportunity to appear before you to present testimony on behalf of your fight to make union violence subject to the Hobbs Act.

As you know, the Hobbs Act was passed in 1946 to address the problem of union violence and legislative history clearly indicates that using force or violence or the threat of force or violence to obtain the property of another is extortionate behavior and is condemned by the Hobbs Act.

However, the Supreme Court in 1973 decided in *U.S.* vs. *Enmons*, that this law would not apply where a legitimate union objective was the goal of the extortionate behavior. This meant that where the rest of us might be prosecuted under the Hobbs Act for the type of violence and threats it prescribes, a special exception was allowed for unions. Today, it is unfortunately all too evident that this unintended loophole actually encourages the intimidating lawlessness and destruction wrought by unions that is sometimes the mark of labor-management disputes.

Because of this profound injustice, we in the House Republican Study Committee were compelled to hold a hearing on the subject on February 8 of this year. I had the privilege of chairing those hearings. Our frustration stems not only from the injustice of the exemption carved out by the *Enmons* decision, but also from the fact that legislation to close the current loophole in the law has been completely stalled by the Democratic leadership in the House. Despite the introduction of two bills in the House to address this problem, my own and one by my colleague, Representative Ken Robinson (H.R. 287), the chairman of the Judiciary Committee and the chairman of the Criminal Justice Subcommittee have allowed no action on either bill.

Unless there is a change, there can be no opportunity in this Congress for the Members of the House of Representatives to debate the merits of the issue or to vote on this sorely needed legislation. Four witnesses testified at our hearings appearing at some personal risk. All had suffered from destruction of property, intimidation and threats, and from the emotional effects of such lawlessness.

Further, all had been touched by physical violence or the threat of such violence in some fashion. Additional potential witnesses whom we had contacted refused to appear before our committee because of fear of further threats or violent acts directed at them, their families, and their property. Of those who did appear, one had been released from the hospital just the day before our hearings after serious spinal surgery necessitated by injuries he had received from a union goon squad.

Another had undergone brain surgery as a result of injuries he received from goons. I might note parenthetically, Mr. Chairman, that when I say goons, what those witnesses testified to on that point is that the people who engaged in that violence were not members of the union. The union bus was employed to cart them out to the site, but that they were not themselves union members.

The testimony of these witnesses pointed up the inadequacy of local remedies and the urgent need for Congress to act to bring equity to the law. In most cases, there was virtually little or no cooperation from local law enforcement officials for they were powerless in countering the political strength of the union, outnumbered, or were themselves unionized and compromised on those grounds.

No matter what the reason, there was no adequate protection or assistance for the victims of union lawlessness. The information gained at our February 8, 1984 hearing on union violence offers a significant insight into the widespread and pervasive nature of union violence. In the belief that the substantive record from that hearing may be of interest to you and assist you in your work on this issue, I would like to offer it at this time to be included in full in the record of the proceedings here today.

Senator GRASSLEY. It will be included.[1]

Mr. CRANE. Thank you, Mr. Chairman. Mr. Chairman, I know you will agree with me when I say that it is a crime that lawlessness such as the type we are addressing today be allowed to continue unchecked by any semblance of equity in the law. Further, I find it positively shameful that Congress has so far been reluctant to act in the face of such injustice by restoring balance to the Hobbs Act.

I congratulate you on the work that you and your staff have done in advancing this legislation. It is my hope that the members of this committee will indeed be successful in gaining rapid passage of the legislation before us today. Your dedication to this effort is an inspiration to all of us who share your goal.

Senator GRASSLEY. Congressman Bliley.

Mr. BLILEY. Thank you, Mr. Chairman. I appreciate very much the opportunity to appear before you this morning. I commend you for calling these hearings. There is no subject more important for the Congress of the United States than the safety of American citizens. And the activities, the incidents of violence which this committee will examine this morning are a more genuine and immediate threat to the American people than the frequently discussed fears of foreign nations and nuclear weapons.

---

[1] Transcript of House hearing can be found on page 175.

I would observe that this is the second time in 3½ years in Congress that I have had cause to appear before a Senate hearing. Though I am pleased to be here this morning, I regret that it is necessary for me to come.

Over 10 years ago the Supreme Court issued the decision which exempted unions from Federal antiextortion statutes during organizing activities. For 10 years the Judiciary Committee of the House of Representatives has refused to even hold hearings on proposals to amend the Hobbs Act.

It is a real travesty that the leadership in the House would abuse the power of scheduling to squelch debate on bills such as the proposed amendments to the Hobbs Act, which are supported by the overwhelming majority of American people. Because of the unreasoned opposition of the House leadership to this proposal, I am doubly pleased that you are holding these hearings.

As my colleague has mentioned, the Republican Study Committee, of which I am also a vice chairman, held its own hearings on union violence because our own Judiciary Committee had so adamantly refused to do so. The evidence we uncovered was, in a word, shocking.

The response of most Americans is that the documented tales we heard are just the kind of thing that cannot happen in America. They are certainly the kind of thing that should not happen in America, and equally remarkable to me is that Congress has it entirely within its power to change the situation and to hold individuals and organizations accountable to the harm and damage they cause. One of the most compelling reasons to amend the Hobbs Act, to address the *Enmons* decision, is the perverted view of the law which has grown out of that decision.

Just last month we all saw in the newspaper photographs of union members in Las Vegas bashing in the hood, top, and sides of a car which was being driven into a parking lot. When several of the union members were arrested for this blatant act of thuggery, caught on camera, mind you, the union called the Justice Department to investigate the treatment of their members.

This is a country founded on the principle that no man is above the law. Yet under the *Enmons* decision, certain groups at certain times are above the law. This situation must be changed.

Equally if not more compelling, are the rights of law abiding citizens to live their lives and run their businesses in peace. For too many of our fellow citizens, this right has been taken away by a small, privileged group. No one should have the right to injure another person, to burn his business, to ruin his livelihood. Yet that today is just the situation we find ourselves in.

Mr. Chairman, I will not go on much longer. You are going to hear from some of the same witnesses we had at the Study Committee hearing. I would ask most earnestly that you listen to their stories and judge for yourselves the way justice and compassion point. Mr. Chairman, I would finally request permission to insert after my statement a report prepared by the Republican Study Committee on its hearings on labor violence.

That report will be useful to your committee by its concise statement of the nature of the problem, the need for legislation, and the conclusions our group reached after our own hearing.

Thank you very much.

[Material referred to follows:]

Republican
Study
Committee

RSC

March 5, 1984

William E. Dannemeyer
Chairman

REPORT ON

RSC HEARINGS ON LABOR VIOLENCE

On February 8, 1984, the RSC held hearings on the subject of labor violence. These hearings stemmed from continuing frustration on the part of conservatives in the House: the widespread nature of this type of violence has not been adequately aired, and legislation to discourage this violence has been stalled by the Democratic leadership.

The Focus:

The hearings focused on an injustice in current federal law. The Hobbs Act addresses the crime of extortion, described as the taking of property from another by using force or violence to obtain another's consent. However, in a 1973 Supreme Court decision known as the Enmons decision, this law was held not to apply where the extortion had a legitimate labor objective as a goal. Thus, although the rest of us could be prosecuted under the Hobbs Act for extortion as described above, a special exemption for labor is allowed for example when this tactic is used in a press for higher wages or benefits.

Corrective Legislation:

There are two bills in the House and one in the Senate amending the Hobbs Act in a way that would restore equity, making sure that labor violence is treated no differently than any other violence falling within the federal realm. These bills eliminate the special exemption now enjoyed by labor, clarifying Congressional intent so that the law cannot be again misinterpreted by the courts.

H.R. 287 (J. Kenneth Robinson) and H.R. 1514 (P.M. Crane) are pending in the Judiciary Committee, Subcommittee on Criminal Justice, with no action pending.

S. 462 (Grassley) had hearings last October in the Subcommittee on Separation of Powers in the Judiciary Committee, and full Committtee hearings are expected in mid-March.

Witnesses:

Four witnesses testified at these hearings, appearing before the committee despite some personal risk. All had already suffered greatly - from destruction of property, from intimidation and threats, from physical violence, and from the emotional effects of such lawlessness.

To further point up the magnitude of the problem of unchecked labor violence, we note that three of the seven witnesses originally invited to testify later declined to appear before our committee because they said they had received further threats of violence and were afraid to appear, or they were fearful of further violent acts if they dared to testify at the hearing.

Federal Law Needed:

There are numerous factors which make local or state prosecution and conviction of labor violence less than certain. Individual states are limited in effectively dealing with labor violence affecting interstate commerce. Indeed, in some cases labor tacticians from out of state are sent into a locality expressly to plan or manage a local or statewide strike.

Labor violence can exert tremendous pressure on authorities and institutions of a community which in some cases are clearly beyond its resources to contain equitably.

Local and state public officials are sometimes hesitant to pursue a case of labor violence because of the labor union's political or financial clout. Law enforcement agencies have been known to decline to step in because they themselves are unionized and are therefore reluctant to interfere with the union responsible for the violence.

It cannot be assumed that individuals willing to bomb, sabotage equipment, destroy private property, and physically assault another would not also continue this behavior to exert further pressure in order to avoid prosecution and conviction by local or state authorities. Prosecution under such circumstances can sometimes be understandably lax. Further, in cases of strikes by public officials (police or firemen, for example) there may be no local law enforcement or government to speak of.

Further, for fifty years labor management relations have been widely presumed to affect interstate Commerce. The national organization structure of most unions, with jurisdiction that covers many states, supports this view, and violence of the unions certainly impact collective bargaining and in turn, interstate commerce.

> It clearly is an area of legitimate Federal jurisdiction, because these unions do cross State borders, and normally, I would harbor a great respect for local law enforcement, but you are dealing with entities here that are not just national - they are international, and as a result, that is a legitimate basis for getting the national law enforcement authorities to go to work in your behalf, expecially in areas where local law enforcement authorities have broken down. (Rep. Philip Crane, RSC hearings on labor violence, 2/8/84)

Testimony

The witnesses' testimony illustrated graphically the inadequacy of local remedies and the need for federal legislation to restore equity in the law.

* HORACE GUYTON, A NEW JERSEY JANITOR

His union struck Wheaton Industries May '83. He went back to work after union stonewalled him on reasons. House vandalized, threatened with knife, told he was on 'Hit List', Guyton moved. Threats kept up. Knows his photo, phone and license numbers are displayed at union headquarters. Strike is over, persecution isn't.

Mr. Guyton has received no cooperation from law enforcement officials in his town:

> The local law enforcement, they're not doing anything. I have had a knife waved in my face, my life threatened. I called the police. They referred me to the sheriff's department. The sheriff's department came after staying out in the picket line with the strikers for about 45 minutes, they come up to the building and they tell me

> that if the strikers call and say I am saying anything to them, they are going to come back and lock me up. That was it. Nothing else was done or anything.
>
> ...who can I call? I can't call the local police. I can't call the sheriff's department. They have already shown they won't do anything. I am on my own.

The witness made an eloquent plea for passage of the legislation to amend the Hobbs Act in order to restore equity in the law:

> So I am going to keep working like this, in fear. I don't know how long I can take this.... Something has to be done. I don't know if Congress will pass this Hobbs Act [amendments], but I am praying they will, and I wish everybody else gives you a prayer to get through this before something bad comes out of this, not only in this part of the country, but other parts where it is worse than this.

* CHER MUNGOVAN, WIFE OF PROTECTED WITNESS

Husband Walter had $2 million-a-year construction business in Hawaii, paid his people union scale plus. Testified in federal probe about illegal union actions against his company. Repeatedly threatened, Walter now under federal witness protection program. Wife Cher doesn't know who or where he is. Their life's work is ruined.

This witness continues to receive threats on her life for her courage in pursuing the injustices done to her family. She and her 12 year old son still live in constant fear and continue to receive death threats. They are victims of unchecked union intimidation and violence, and they are virtually unprotected by the law.

The only consequence for the union which vowed to break Walter Mungovan for his refusal to force his employees into a union (the employees had voted in a federally-supervised election to remain non-union) has been several perjury convictions. Mrs. Mungovan illustrated the problems that many victims find when forced to turn to local or state government for help, and her testimony reinforces the need for federal legislation to fight this type of labor violence and lawlessness:

> The thing that bothers me over the sentencing of Kapau* is he is a convicted felon with a prior criminal record. He produced for a sentencing report letters of support and admiration from Hawaii members of Congress and the local state legislators, and endorsements like that, which are obviously politically motivated, I don't know how we can ever hope to live in a society free of union violence.

Regarding the need to amend the Hobbs Act, Mrs. Mungovan impressed upon those present the need for equity.

> We only ask for equal rights under the law and that the unions and members or people that they might hire be liable for their actions just the same as you or I are. We don't think that is too much to ask for considering what we have gone through and are still going through today....
>
> We only ask that the law be amended so that we stand a fighting chance in this thing.

---

* head of Hawaii carpenters union, sentenced only for perjury in the Mungovan case; vowed to break Walter Mungovan.

> I don't understand how, in effect, any member of Congress can condone the kind of activity that has destroyed my family, taken my husband from me, and is still refusing to vote for an amendment to the Hobbs Act.

* SIGMUND KAYE, PHILADELPHIA CONTRACTOR

Was renovating a house with non-union workers. They were driven off and house wrecked by 15 burly men in gray union-owned bus. Kaye beat up by same men same day, resulting in hospitalization for spinal surgery. Same bus linked to other scenes of intimidation and violence.

As in the case of many other victims of this type of union violence, Mr. Kaye received virtually no assistance from police or other local law enforcement agencies:

> I have worked with the Philadelphia police department, the DA's office, the United States Attorney. No one has made any efforts to bring about any restitution.
>
> The police have done absolutely nothing. They have made...the linkage with the union...and that's as far as they've gone. They will not go any further. The FBI cannot get involved because it's not a Federal crime. The United States Attorney won't go near it... We cannot get cooperation from the authorities.

Mr. Kaye emphasized the need for federal legislation in order to combat this type of criminal behavior:

> I'm hoping my testimony here along with other people here can try and get some Federal jurisdiction in combatting these crimes, because nothing is being done on a local level. Nothing is being done.

And again,

> I just feel as though it's a hopeless case as far as any prosecution is concerned, because the Philadelphia Police Department are not willing to do anything. So I'm hoping that Federally we can do something...

BOB WOHLSEN, PENNSYLVANIA CONTRACTOR

Company had contract to expand musuem in Chadds Ford, Pennsylvania. Union activists blocked site and museum too. On 6-8-83 Wohlsen and 4 others videotaped it for anti-picketing injunction. They were beaten. Wohlsen's head, stomach and back were kicked and punched. Needed brain surgery.

Mr. Wohlsen's testimony supported what our committee found to be the frequently the case: it is not always a simple matter for law enforcement authorities to contain violence in these situations:

> Right in the presence of state police being there, they punctured our tires and beat up our cars and cut our hydraulic lines on our trailers, right there.
>
> Those policemen had a heck of a time in that violent situation.... Every time we call the police we are told 'there is nothing we can do.'

Mr. Wohlsen urged the Congress to act against such lawlessness:

> "I would not pretend to know more about organized labor and this country's labor laws than what this distinguished committee knows. But I do know that I have never seen or experienced such a total and blatant disregard for the law and for the most basic of all human rights. No union, no individual, no matter how politically strong they may be, should have the power to be above the law. No one should be allowed to hurt another human being or to disrupt or attempt to destroy another peson's business. If I committed a crime I would expect to be punished. Furthermore, I would in fact be punished. Why should a labor organization, its leadership and its members be any different.
>
> ... violence, vandalism, extortion and sheer terrorism are allowed to continue. If federal law created the various rights for the unions then the same body of law should also regulate labor's behavior and punish its misconduct. As a citizen and as a businessman I should be free from the type of problem that occurred on June 8, 1983. It is obvious that something needs to be done to further protect our rights.

Background

Federal legislative attempts to control union violence began with the Anti-Racketeering Act of 1934, which was one of a number of bills resulting from investigations into racketeering, conducted in 1933 by a subcommittee of the Senate Committee on Interstate Commerce. With this legislation the Congress recognized that labor violence was a problem which state and local governments could not effectively control.

The Anti-Racketeering Act of 1934 set penalties for those who use or threaten to use force, violence or coercion to obtain money or property or other valuable consideration, or the purchase or rental of property, or protective services. However, this prohibition specifically did not include "the payment of wages by a bona fide employer to a bona fide employee." In short, extortion against employers was illegal except in the case of wages.

This exemption led to a Supreme Court ruling in *U.S. v. Local 807* (118 F. 2d 684 (2d Cir. 1941), *aff'd*, 315 U.S. 521, (1942)) that under the federal Anti-Racketeering Act a New York City Teamsters local could stop trucks as they came into the city and use violence and threats of violence to obtain from the truck owners the equivalent of a day's pay either to allow the teamsters to take the trucks into the city or in many instances for simply allowing the trucks to enter the city with their regular drivers. The statute did not include a prohibition against force or violence to obtain "the payment of wages by a bona fide employer to a bona fide employees," and in the *U.S. v. Local 807* situation, the court oddly decided that there *was a* bona-fide employer-employee situation as long as the person who extorted the payments offered to do the work. This statute then did not protect the out-of-town drivers nor punish the behavior of the Teamster local.

This holding futher indicated the court's preoccupation with the notion that if the objective were "traditionally legitimate ... from labor's perspective" then the means to achieve the objective would not be viewed as extortion, no matter how violent.

Congress later acted to assure that such an interpretation would no longer be held valid by the courts by passing the Hobbs Act.

In 1946 the Hobbs Act was passed to eliminate the wage exemption. The debate on the Hobbs Act indicated that the Congress felt the Supreme Court wrongly decided the *Local 807* case, and that the decision was a "distortion of the intent of Congress." (Congressman Halleck, see 91 Cong. Rec. 11900, 1945; also 88 Cong. Rec. 2071, 5334-35, 1942; 89 Cong. Rec. 3193, 3201-2, 3206-7, 3220, 1943.) In an effort to be sure that a future similar case would not be similarly decided, the Congress rewrote the 1934 Anti-Racketeering Act and took care to completely eliminate the exemption on which the decision in the *Local 807* case was based. The Hobbs Act read as follows:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in Commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

Congressman Hobbs indicated during debate that his bill, while eliminating the wage exemption, was in fact designed to correct the deficiency in the 1934 federal law. The Congress was intent on making sure that a decision such as in the *Local 807* case would not be repeated. Extortion this time was defined to include the obtaining of property from another, with his consent, induced by *wrongful* use of actual or threatened force, violence or fear. (emphasis added) .

The inclusion of the world "wrongful" is a key to continuing problems with decisions regarding union violence based on the Supreme Court interpretation of the Hobbs Act. The Supreme Court decided in 1973 in *United States v. Enmons* (335 F. Supp. 641 (E.D. La. 1971) *aff'd*, 410 U.S. 396, (1973)) that acts of violence could not be considered extortion under the Hobbs Act when perpetrated in furtherance of a legitimate labor objective. The Court felt that the word "wrongful" would not have been included in the definition of extortion if the Hobbs Act had been meant to apply to *all* labor violence.

A further look at legislative history, however, would show convincingly that the *Enmons* decision reached by the Supreme Court is in error, and that "wrongful" applies to all but legitimate labor activity, such as allowable peaceful striking and picketing.

In fact, Congressman Hobbs made it very clear during debate that a simple threat to go on strike would not be viewed as extortion under the Act, and stated that the word "wrongful" applied to the entire relevant section of the Act. Thus a strike is not "wrongful force" unless accompanied by violence. (See *Nebraska Law Review* vol. 59, No. 4 (1980) p. 893).

It is reasonable to assume that the insertion of the word "wrongful" was meant to assure the opponents that the Hobbs Act was not meant to restrict legitimate activity, and even if a strike were to be considered an application of force, it would not be wrongful force, unless violence were to be involved. This interpretation is certainly compatible with the legislative history as brought out by debate and is, in addition, compatible with the desire of the Congress to overrule the *Local 807* decision.

Committee Findings and Recommendations:

The testimony developed at this hearing reinforced findings made by the Senate Judiciary Committee's Subcommittee on Separation of Powers, at its hearings held October, 1983, and by studies such as the Wharton School's comprehensive study on union violence published in 1983. In short, labor violence is all too frequently attributable to union strike tactics which include premeditated efforts at intimidation through fear and violence, and such violence is not prosecutable

under the Hobbs Act due to a misinterpretation of Congressional intent made in a 1973 Supreme Court case. Further, this type of violence is part of a widespread pattern serious enough to be a national problem.

The Anti-Racketeering Act, and later the Hobbs Act, were passed in an effort to curb labor violence. Unfortunately, federal laws passed to prohibit such violence have been virtually nullified through inadequate court interpretations of Congressional intent and legislative history. Yet the Congress never intended to make the distinction between union workers and other Americans.

In other words, as brokers of employee services, labor unions were to be limited in the use of force to the same extent as were other brokers or sellers of commodities; in either instance, the effectuation of the exchange through the use of force was to be prohibited as extortion. (Wharton Study, No. 25 (1983)).

H.R. 287 and H.R. 1514 are the most recent in a continuing effort to tighten up the Anti-Racketeering Act (later the Hobbs Act) in order to clarify Congressional intent and correct the interpretation of the Court.

These bills do not interfere with the legal right to strike or picket. They are aimed solely at restoring equity by making sure that labor violence is treated no differently than any other violence.

The legislation would amend the Hobbs Act so that violence or threats of violence "in the course of a legitimate labor dispute or in pursuit of legitimate union or labor ends or objectives" would be a violation of the Act and would be subject to federal prosecution. It would close the legal loophole in the law created by the Supreme Court interpretation of the Act in the Enmons case.

It is unfortunate that the Democratic leadership in the Congress has seen fit to ignore what is a serious nationwide problem, and has refused to allow these bills to be considered in the House. In the face of this deliberate inaction, cosponsorship of H.R. 287 and H.R. 1514 is particularly important as a part of the effort to force the leadership to allow consideration of this legislation.

This committee promises that the effort to rectify the current injustice will not stop with these hearings, and that our members will do all that is possible to achieve passage of H.R. 287, H.R. 1514 or similar legislation.

+ + + + + + +

Daphne Miller

This material was prepared at the request of a member of the Republican Study Committee. The views contained in it should not be construed as being the views of any specific officer or member of the Republican Study Committee.
ROOM 433, CANNON BUILDING, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 20515 (202) 225-0587

Senator **Grassley**. Thank you, Congressman Bliley. And I hope both of you can stay. I have some questions I would like to ask. Is that possible under your time schedule?

Mr. **Bliley**. Yes, indeed, Senator.

Senator **Grassley**. OK. Now, you had some hearings, as you stated, before the Republican Study Committee, and they revealed, did they not, that some of the local police authorities, at least in Hawaii and New Jersey cases, that they sided very outrightly with union officials rather than with the people who had called them for help at the time of violence.

Mr. **Bliley**. That is correct, Senator. They pointed out that in one case in New Jersey, then sent the sheriff's people out there and the sheriff's people went over and talked to the union folks for 45 minutes, then came in and said if you call us again, we are going to lock you up.

Senator **Grassley**. OK. Well, did one of the witnesses tell you that the police were called and actually said that they did not want to arrest brother union members?

Mr. **Bliley**. Yes, they did.

Senator **Grassley**. Was it put in those terms?

Mr. **Bliley**. It was put in exactly those terms.

Senator **Grassley**. I also understand that there were some questions raised about outlaw motorcycle gangs doing enforcement work in some cases. Is that correct, as well?

Mr. **Crane**. That testimony, Mr. Chairman, came from one of our colleagues from Pennsylvania, Mr. Walker, who cited that incident and it is contained within the full hearings. He cited that as an incident with which he was personally conversant and two of the witnesses were in the construction business from the Pennsylvania area. In fact, one of them, I believe, was a constituent of Mr. Walker's, and he verified the accuracy of that, too.

Senator **Grassley**. Did that information come out in his hearing that he had on the subject of union violence, or did that come out of those hearings that he held 2 or 3 years ago on motorcycle gangs and food stamp fraud?

Mr. **Crane**. I am not altogether sure about that. It was contained in the Republican Study Committee hearings when we had witnesses testifying about union violence.

Senator **Grassley**. One of our witnesses at our October hearing was a county sheriff from Idaho. He and another witness from the same area, Mr. Mike Ashby, brought with them some homemade weapons from a strike there. One example would be like what is referred to as a "frisbee." These were obviously buried to cause tires to blow out and ruin particularly heavy truck tires.

Also they brought with them some things that they referred to as "spiders." Now, obviously sometimes these would be thrown out and they would not maybe work. These, then, always landed upright and were more certain of accomplishing their goals.

These would have like an 80-percent success rate of accomplishing what they were supposed to. I think, looking at these, although the welds might cover it up, but it looks to me like these would be what we would refer to as staples that are bent over and up and then welded together. And so there is pretty much sophistication that goes into the efforts to cause the problems that—in order to prevent people from going to work and to make the purpose of the strike hold pretty much strong.

We also had these ball bearings presented to us used in a strike. These could be used just like a slingshot bullet and have just about the same force and were used, obviously in most instances, against cars that were going into work. So, now, as I said, Mike Ashby and the sheriff at that time told me that these were used by people who were professionals in trying to stop people from going to work and for the purpose of violence and intimidation.

So those are some examples of evidence we had presented to us.

I wanted to ask you, Congressman Bliley, since you are a former mayor and obviously had control over local officials, do you think that local officials alone should be expected to enforce the law against strike related violence?

Mr. Bliley. Senator, I think it is unrealistic to expect it. First of all, in urban areas, cities, most of the police departments are unionized. So you have the problem of expecting the members to act against their brother unionists. Second, the political clout that these unions have and bring to bear on commonwealth's attorneys and sheriffs, and the like, and in some cases even the judiciary where they are elected, is too great.

And I think that the record, as you have found and will find and the record that we had in our hearings before the Study Committee, shows just this; that the local law enforcement authorities refused to act even when presented with clear evidence. So I would say that there is obviously a need to change the law and to remove the potential of political clout from having any effect.

Mr. Crane. Mr. Chairman, could I inject one thing there, too?

Senator Grassley. Yes.

Mr. Crane. I think it was clearly the intent at the time of the passage of the antiracketeering act that this kind of activity be proscribed and the Congress assumed, prior to the *Enmons* case, that that enforcement power did indeed reside in the Federal Government. As a result, I think what clearly comes across in the hearings you have conducted already and what the hearings before our Study Committee showed is that there is a deficiency that can be remedied. I want to congratulate you for the pioneering efforts you have done in this regard.

Senator Grassley. Well, thank you very much. How many cosponsors are there for your House bill right now?

Mr. Crane. We have at the present time 64. Well, Mr. Robinson has a bill. I have a bill. Mr. Robinson has 64 cosponsors; so, 65 members on his and then one additional bill that is essentially the same as his own.

Senator Grassley. Were some of the people that you invited to testify before your hearing afraid to come to testify?

Mr. Bliley. Of the seven we invited, Senator, three were afraid to come.

Senator Grassley. Well, it is not just individuals that sometimes have those problems. We also had some large corporations who were afraid to provide the committee with information out of fear of retaliation as well.

Do you think that we are going to be able to get our colleagues, I should say, the members of the House to get an opportunity to vote on this as far as the leadership of the House is concerned?

Mr. **Crane**. Unfortunately, Mr. Chairman, that is our stumbling block on the House side. The Democratic leadership, as I indicated in my testimony, has kept this legislation bottled up; they will not even hold hearings on it. And then they have further impeded the ability of the minority to call up legislation through a unanimous consent request on the floor for debate and a vote. Alteration of the House rules now requires that we get the consent of the Democratic majority leadership as well as the Republican minority leadership even to make a unanimous consent request to bring bills before that body.

And the Democratic majority leadership to date has steadfastly refused to grant that, notwithstanding the fact that the Republican leadership has granted permission.

Senator **Grassley**. I want to thank you both very much for testifying, but more important, thank you for your leadership in this area. And as I pointed out in my closing remarks yesterday, I hope you folks would agree with this effort. You know, the importance of unions to the working people of this country, to economic justice, is well established, well a part of our social fabric of our society. And the effort we have here is to correct a Supreme Court decision that five to four said that from certain aspects, union activity was exempt from the Hobbs Act. I think it reaches a point where certain activity being conducted as a result of that Supreme Court case then puts in jeopardy the credibility of labor unions.

And what we are trying to do here is to bring equal treatment to management and to labor and to eliminate violence from normal collective bargaining so that we can reestablish the proper role of unions in collective bargaining from the standpoint of the credibility that the public will have toward them.

And we want to discourage anything but good faith collective bargaining as the tool for bringing economic justice to the workers of America.

Mr. **Crane**. Mr. Chairman, I salute you for your endeavors here and the progress you have made. It takes more than the usual amount of courage. And I think you are absolutely correct when at the opening of these hearings today you acknowledged the fact that this is not intended to attack unions. I worked for the Derdge and Dockworkers Union when I was a young man.

My grandfather was a member of the machinists union in the steel mills outside of Chicago early in this century. And I have no case to make against the concept of unions. They have a very important role to play. But I think the unions themselves and unquestionably many members even in union leadership have to be appalled over incidents like this because it reflects badly on the entire union movement. And I again want to salute you for what you have done in this important area.

Senator **Grassley**. Well, thanks to both of you. And I am going to recess this hearing until 5 minutes to 11. There is a personal matter I have to take care of.

[Brief recess.]

[Aforementioned transcript of House hearing follows:]

HEARING ON LABOR VIOLENCE

THURSDAY, FEBRUARY 9, 1984

House of Representatives,
Republican Ad Hoc Study Committee,
Washington, DC.

The committee met at 9:30 a.m. in room 304 Cannon House Office Building, the Hon. Philip M. Crane (chairman) presiding.

Present: Representatives Crane, Hansen, Nielson, Robinson, Dannemeyer, Bliley, Walker and Bilirakis.

Mr. Crane. I think we will convene these hearings.

We anticipate further colleagues being here momentarily, but first, on behalf of the Republican Study Committee, let me welcome everyone to the hearings on the subject of labor violence. We are examining this issue this morning an an attempt to focus on an injustice in our current law. The Hobbs Act addresses the crime of extortion or the taking of property from another by using force or violence or the threat of violence to obtain the other's consent. The law has been held not to apply if the goals of the violence are legitimate union objectives.

This means that although most of us could be prosecuted under the Hobbs Act for extortion as described above, those of us who use this tactic to press for union objectives are scot-free under the Hobbs Act.

This means that the practical effect of this holding is that there is no effective Federal law to address this type of violence, even though the original sponsor of this law clearly meant it to apply to all perpetrators. Congressman Hobbs himself stated that. "Crime is crime, no matter who commits it and extortion is extortion whether or not the perpetrator has a union card."

The Congress recognized with the passage of the 1934 Antiracketeering Act that Federal action was necessary to address the problem of labor violence. Such violence can exert a very powerful pressure on the authorities and institutions of a community which, in some cases, is beyond the resources of local and state authorities to contain equitably.

Both the Antiracketeering Act and later the Hobbs Act were passed in an effort to curb union violence. Unfortunately, these efforts have been virtually nullified through inadequate court interpretations of Congressional intent.

H.R. 287 and H.R. 1514 are two bills in the House of Representatives that are aimed at restoring equity by making sure that labor violence is treated no differently than any other violence falling within the Federal realm. These bills will eliminate the special exemption now enjoyed by labor, clarifying the Congressional intent of the Hobbs Act so that it cannot again be misinterpreted by the courts.

This morning, we will hear from witnesses who can tell us of their personal experience with extortion committed in furtherance of union goals. Their testimony will indicate a pattern of violence that takes place in many cases with the planning and encouragement of union officials. We are particularly grateful to them for their appearance here this morning, for they have come at considerable personal risk and have already suffered greatly, some from destruction of property, some from violent physical harm, and all from the personal effects of such lawlessness.

I can further stress the magnitude of the problem by telling you that three victims of such violence who at first said they would be willing to testify here today later declined to appear, telling us that they had received further threats of violence and were afraid, that they were fearful of further violent acts if they dared to testify. Two of these people had seen their homes firebombed with their young children inside, after having received threats against both themselves and their families.

Another had seen many thousands of dollars of damage to his equipment on the job site, had his office blown up, and had countless employees physically assaulted and threatened.

Just the day before yesterday, in explaining why he was now afraid to come here to testify, an officer of a pipeline company told us, "These are pretty powerful people that you are up against." That particular witness had already sent written testimony to us in preparation for his appearance here today. Although he is now afraid of further violence should he appear, he has given us permission to include his written testimony as a part of our hearing record, and I would like to submit that testimony at this point.

[The statement of Mr. Haines for the record follows:]

Statement of Douglas Haines, Field Office Manager, Haines Pipeline Construction, Inc.

I, Douglas Haines, field office manager for Haines Pipeline, Inc. state the following facts involving union violence on a pipeline construction job from Warm Springs, Montana, to Cut Bank, Montana.

The construction of the job started around June 20, 1983, at Warm Springs, Montana. The contractor doing the job was Haines Pipeline Construction, Inc., of Woodward, Oklahoma. Haines is a nonunion contractor.

Haines Pipeline's president, Brad Haines, had been contacted by union officials to sign a union contract to do the job. Mr. Haines stated to the union officials that there was not enough money allowed in the contract price to do the job on a union basis. Mr. Haines took the contract for a lesser nonunion price than it had been bid by his competition at a higher union scale.

The Montana Power Company, for whom Haines is working on the pipeline project, had been contacted by union officials before the project started. They told the Montana Power Company that if the contract went to a nonunion contractor it would mean war. The official at Montana Power Company stated that the job would go to the lowest qualified bidder. In this case it was Haines Pipeline Construction, Inc.

During the remainder of June and the first part of July, Mr. Haines was contacted by union officials concerning the signing of a contract with the union. Mr. Haines declined each time.

The construction project continued on schedule until the night of July 13. During the early hours of the morning a night watchman was forced to abandon his post as watchman over seven (7) caterpillar dozers. The dozers were located in a remote area. When construction workers arrived at the site the next morning they found all of the dozers running. They quickly shut off each one until they could be inspected. During the inspection it was discovered that valve grinding compound had been poured into the engine and transmission of each dozer. One engine was completely destroyed and the others had minor damage. There was a car seen around the site where the damage had occurred. The tag number was turned in and was discovered to be registered to the International Operating Engineers Union.

The next violence that occurred was July 20 at the home office of Haines Pipeline located in Woodward, Oklahoma. A small explosive device was set outside the offices of Brad and Jack Haines, owners of the company. The device exploded causing damage to the building. A phone call was received the next morning asking if we had received the message. Our reply was yes, but it would not change our minds.

On the morning of July 23 around 5:45 a.m. the night watchman called the motel room of Doug Haines with information that a Greyhound bus load of people, along with about 20 cars was at the job site field office. He wanted to know what he should do. I told him to call the local authorities and advise them of the possibility of trouble. Upon my arrival I was confronted by about 200 picketers. They were blocking the road which lead into the job site. I stopped about 50 feet from the crowd. I noticed that several of them were carrying signs identifying their unions. They were also carrying weapons, which included ball bats, steel pipe, chains and wrist rockets. As I was sitting there looking at the crowd they started running toward the car yelling and swinging their weapons. They were yelling "scabs go home". This phrase was used often throughout the conflict. I quickly exited the scene and went to the office on the back roads. Within the next hour several employees started arriving at the office with their windshields broken out and vehicles dented up. At about this same time the crowd of rioters moved toward the field office where I was located. They were yelling and throwing rocks at the pickups and employees. There was a law enforcement officer there while this was going on, but he didn't seem to want to stop any of the trouble.

The rioters then started moving down the road where most of our crews were working. When this started happening it was in our best interest to contact our crew foremen by radio and tell them to take their men and head for the town where they were staying. The rioters split into about three groups. One group went down the construction line, the second headed for town and the third headed for another location on the job. There was violence in every location. They were starting dozers that were unmanned and letting them run through irrigation systems and fences. They were also slashing tires and breaking windows on everything in sight. We had a security man who was dragged out of his pickup and beaten up seriously. He was told to go back to Oklahoma where he had come from. The funny part about this was that the man was from Montana.

As the day went on the crowd of rioters went to the motels and camp grounds where the construction workers lived, and threatened to hurt them or burn down their homes if they did not leave. This caused numerous workers to pack up and leave. They were afraid for their lives. There just wasn't enough help from the law enforcement officials to do any good. The women were called the most terrible names and the men beaten up if caught out by themselves.

Late that afternoon a law enforcement official came by the office and told us if we valued our lives we had better pack up everything and leave. He said that the rioters had planned to burn the office and blow up our fuel storage tanks, and that he could not offer us any protection. He said that the sheriff's department would escort us out of the county so we would be protected. I could not even go into town to pick up my wife. The sheriff's department picked her up and brought her to me. When you get right down to the bottom of all of this, we were just simply run out of the county. They wanted another county to have the responsibility of taking care of us. Needless to say, we were scared for our lives. It was just like the old days when people were run out of town. It was very hard to understand that something like this could happen in this day and age. I always respected the law in the past, but during all of the violence that occurred they were worthless. This whole occurrence caused Haines Pipeline to shut down for 9 days until we were guaranteed there would be protection for our employees.

A meeting was held July 26 in Butte, Montana, between the union officials, the Montana Power Company officials, and Brad Haines of Haines Pipeline. The Governor's aide for the State of Montana was also present. The meeting was called to try to establish a solution concerning the project before construction would resume. The unions all denied causing any trouble and wanted Haines to sign their contract. Haines declined and stated that he would stand behind his original decision. The meeting adjourned without resolving anything. I might add to all of this that the unions never attempted to organize or set up informational booths so that the workers could decide for themselves.

Construction on the project continued on August 1, 1983. During the next few days picketers were most frequent throughout the pipeline project. Reports still came in of violence that occurred during the night time hours. Employees were still being confronted by union members. Every day brought a numerous turn over in our work force due to the violence.

On the morning of August 5 a second riot occurred similar to the one on July 23. There were two bus loads of union rioters who were bused from the other side of the State so that they could take part in the riot. There were more Haines employees beaten up and a number of vehicles damaged extensively. Swat teams were called out to help control the violence. The rioters were drunk and ready to do anything. They cut down fences and entered private property. A very dangerous incident occurred between one group of about thirty rioters and about seven Haines employees. The employees were forced into a canyon where there was no way out. The rioters kept approaching them and damaging equipment. One employee of Haines fired a shot in the air to stop the crowd. This did not work so a second employee lit a stick of dynamite and threw it half way between himself and the crowd. When it exploded the rioters came to a halt. At the same time law enforcement officers arrived but to no surprise the two men that were protecting themselves were arrested. Charges were later dropped due to the fact that self defense was the cause of the action taken.

During the next 3 months violence and sabotage were most common occurrences. It was not uncommon to have wrist rockets thrown through the office windows, nails all over the road and a good number of picketers every day. Wives of the workers were always confronted by union men during the day at public places, literally scaring them to death.

Haines sustained a large amount of equipment damage during this period. By this I mean air compressors and dozers shot up, heavy equipment started without oil in the engines and other numerous things.

Haines Pipeline also suffered a large amount of damage by the press. There was hardly an article in the paper that had any truth to it. The State officials were auditing our records right and left, never finding anything out of order. They also took confidential records and showed them on T.V. and always to no surprise the unions were usually behind everything that went on.

Damage was and still is being suffered in a most extensive way. Holes were discovered in the pipeline during testing operations. This causes a huge amount of expense, time and labor in finding and repairing the holes. They were drilled in the pipe by an electric drill. This is a most common practice of the unions. It was very effective in slowing down the project.

At this time the project is half completed and shut down for the winter. The unions are still at work taking their complaints to court. It looks like a good deal of the winter will be spent in the courtroom before construction will resume on the project.

Everything that has been stated in this report doesn't by far cover all the events on the project, but it does cover the most serious points. During all of the turmoil on the project, many innocent people have been hurt, scared and bruised by what has happened in this country we live in.

Mr. CRANE. I would now like to yield to my colleague, Congressman Hansen, to welcome the witnesses before the committee before we proceed further.

Mr. HANSEN. Thank you, Mr. Chairman.

I appreciate so much Chairman Crane doing this and extend my welcome to you for being here today. I have to say I have spent the last three or four days reading the information leading up to this, and I'm just really appalled. I come from the State of Utah, and we don't have this kind of problem there. But I do see one thing that I think is extremely important, and that is, that from time to time, as legislators, we have to go back to the legislative intent that was originally put into a bill and tighten it up.

As a past legislator in the State of Utah, I remember many times changing legislation, year after year, to get it to the intent we mean and we meant. As Speaker of the Utah House, I used to work constantly on making sure the legislative intent of a bill was written into the thing. We had four or five pages because we all knew that the courts would look at legislative intent.

I am frankly appalled, Mr. Chairman, at some of the interpretations that I see from the Hobbs Act originally to this date. I commend you and these witnesses at this time who want to do something to tighten this up. In America, we should not be intimidated by violence. We should not be intimidated by force or threat of physical violence, and I think you are on the right track. I commend you for it, and I commend these witnesses for being here at this time.

Thank you.

Senator CRANE. Thank you, Mr. Hansen.

Before we begin hearing the witnesses' testimony this morning, I would like briefly to draw your attention to the charts and photographs you see displayed on these eight easels you see in front of you. I might mention that the charts are based only on statistics from recent years and only on violence that has been reported, and when I say reported, there have been newspaper accounts that have covered these incidents.

Frankly, I think this covers just the tip of the iceberg insofar as labor-union violence is concerned. I invite all of you to study these charts and photos, though, and to take a copy with you of the legislation proposed to amend the Hobbs Act and other information available here for further study.

I would like to thank the witnesses here today once again for consenting to appear. Without further comment, we will proceed with their testimony.

I might just parenthetically inject one thing here: These hearings are not being held to condemn unions, per se. What we are condemning, however, and very powerfully condemning, are those elements within the union movement who have resorted to lawlessness and violence and intimidation, and that clearly is not intended to be an indictment of all members or organized labor. But you would think that the members of organized labor, in the leadership and their national councils, most especially here, would be people with perhaps the greatest vested interest in guaranteeing that any of their affiliates in any part of this country would be in the vanguard of seeking to present the proper image and to abide by the law, notwithstanding the fact that a court interpretation has given the unions an opportunity to engage in lawlessness that would result in you and me going to jail, that this sort of thing is conduct that is absolutely unacceptable.

Our first witness today is Mr. Robert Wohlsen, and prior to Mr. Wohlsen's testimony, we are going to view a short video clip relating to injuries which Mr. Wohlsen has suffered. I would like to suggest to all in the audience here that you will hear some obscene language and profanity on this video clip, so anyone who is not prepared for that, either hold your ears or step outside the door momentarily.

Those of you that are seated here can see it on the screen to my left.

[Insert of clip.]

"How would you like it shoved up your ———, huh. Try it."

"——— ——— thing, you come down here and intimidate anybody, we got rights, too." "I will shove the ——— camera in your face." "Mess with me, you ———." "The hell you didn't." "———. Huh, want to take a picture?"

Mr. CRANE. Mr. Wohlsen's company had a contract to expand a museum in Chadds Ford, Pennsylvania, and union activists that were depicted here blocked the site and the museum, too, and on June 8th of this past year Mr. Wohlsen and four others who were videotaping the incident itself ended up getting beaten and beaten rather severely, Mr. Wohlsen, on the the head and stomach and back, kicked in, punched, and, in fact, it was severe enough that he needed brain surgery as a result of the beating he took.

Mr. Wohlsen, I congratulate you for your courage and your willingness to stand up and be counted on behalf of right principles, and I welcome you before the Committee.

STATEMENT OF ROBERT S. WOHLSEN, SR., PRESIDENT, WOHLSEN CONSTRUCTION, INC., LANCASTER, PA

Mr. WOHLSEN. Thank you, Congressman Crane and Congressman Hansen, for allowing me to be here to testify today.

It continues to be an extremely emotional experience for me to come to this great place and be able to speak to you personally in this manner. It's rather difficult when you are looking at George Washington and Abraham Lincoln over your shoulder to realize the opportunities that we have in being able to do this, and we thank you very much for that and thank you for coming.

Mr. CRANE. Thank you, sir.

Mr. WOHLSEN. I just, as a bit of a background, I would like to state that I am a President of a medium to large construction company which was established by my grandfather in the late 1800's. I am the third generation member of the firm, and my son sitting behind me is the fourth.

I am primarily a general contractor, rather, as opposed to a developer. I have worked at this since my childhood. I am a tradesman myself. I can pound those nails, and I can saw those boards, although I haven't done too much of it in the past 20 years. I tell you this, because I was raised with the trades. I know the trades, and I know how they were hard, and I must say to you gentleman that the people confronted us that June 8th were not trained men, the ones that you saw. They are thugs, and I wish you would pay attention to the bus that you saw in that footage.

During the course of my experience up through the '40's and 50's my company was a union company. The members of our firm, the employees of our firm, chose by their own volition not to be members of a union, so I want to state that we are not antiunion. We find many attributes that are helpful for us to be—our men to be a part of a union, but our men chose not to be. For us to survive, we had to go to an open-shop basis, and as a result, this is where we then run into these violent acts that are perpetrated upon us.

Along that line, if you were to see these people, you would recognize that the union members which you didn't see on the clip are those which you did see on the clip or that small group there, but the bulk of the people that were around the corner and on U.S. 1 on the numbers of 70 to 80 are not basically the union thugs. They are all out and out tradesmen, and they don't do things like that.

I say that because I'm not a troublemaker. I want to work with the unions. I would have to say that half my contracts right now are with unions, whether they be plasters, ceiling installers, roofers, steel erectors and what have you. I want to work in harmony in the union with anybody, but wherever we go, we have run into this situation where we are threatened in this manner and where we are coerced and we sit down, we sat down last Friday, my son Bob, Jr. and I sat down last Friday with the carpenter union's business agent, and one of his first remarks—I didn't really care to attend, gentlemen. I'm a little shaky about being around that type of negotiation at this time, and they remarked themselves that how fine they thought it was for Bob to come and sit down and talk about our using their labor on jobs that we have in the Philadelphia area, and there's no problem.

This experience has gone on for years and years. That bus that you see there is in the Philadelphia area. Someone has to know when it goes out. It's no secret when that big thing goes out. You can find it.

I want to report to you that two weeks ago in southern Lancaster County, that bus brought 50 men up to a local welding concern which is doing work in the Delaware area, and they were there at 5:30 in the morning. They beat all over the guy's equipment. They broke his windshields. They broke the automobiles, their trucks, they hung around for two hours or three hours. The state police were called. There were shots fired. Do you realize that's what's going to be next? There were shots fired by those same people, and that's not in Lebanon or someplace like that. You could walk there from here; you could get there today. That's how bad it is, and there are no arrests made, they just go off. I can't tell you why I can't get a—it's not my company, but I'm just trying to say what goes on.

We were doing what we had to do, which was, we had to gain information and had to provide the courts with factual information in order for us to get a temporary injunction, which is what we have to do, and to do that so it was admissible is a videotape, and that's what we were doing that day that you saw the tape. That was admitted to the judge; it was acceptable. We got our temporary injunction, and later on that afternoon, we got our permanent injunction.

So that system works, but the system that doesn't work is the one whereby that we allow this to happen. The state police did come. They were notified the day before, but they didn't arrive until 15 minutes after 7:00, and I wish I had arrived then, because they did calm it down and they did get our men in and they did get our equipment in. Right in the presence of state police being there, they punctured our tires and beat up our cars and cut our hydraulic lines on our trailers, right there.

Those policemen had a heck of a time in that violent situation. At that time I had sustained what I thought was a very minor blow in the head, you saw it. A guy came around with a stone and hit me right in the head, and I picked myself up, as you saw, and they beat up my camera man and put the camera on the ground and trapped on that. Fortunately, we got the type back which was over his shoulder, and that's what you saw. He's not a professional photographer, incidentally. That's why you see the ground so often at certain jumps. That's my son-in-law. I did not think that I had any injuries, and I went about. I went to the doctor's and I went about my business and attended to what I had to do. He said, oh, you just have a sprained arm or crink in the neck, but then this darn thing started cropping up and I got pains over here, and four weeks later, I had to go to the hospital and they diagnosed it and said there was a brain tumor, a brain clot, and they had to remove it.

It took two operations until I got it out. The point I am—that's the easy part. That's just one human being, the devastation that that wrecks upon my family and my firm is unaccountable. I can't tell you how much tragedy that produces.

But why it goes on and why we are all here, I was most saddened to hear about the gentleman that could not attend, the pipeline installer. I talked to him on Monday and encouraged him to come here, and he was afraid to come, yes, he was darn afraid, and his family had been threatened, and you heard it. That's what happened then, and then apparently yesterday, on Tuesday, all that which you just read, Congressman, that's terrible, and that can be stopped. There is nothing in the law as I read it after getting involved in this whether it be the Hobbs Act or whatever it is, but why does that person have rights that I don't have? I wasn't doing anything down there. I was just walking around there doing what they told me to do. But I didn't provoke anyone; I didn't even talk to anyone; I didn't even swear at anyone. I'm certainly not going to jump anyone, long got over that.

So I don't know what the hesitation is that we can't get something in our legal system that would prohibit this from happening. I don't know if it would be the Hobbs Act or whatever combination of law that you put together, but why should that person have rights that you and I don't have?

I'm pursuing my job. I'm pursuing my livelihood, and I can't go punch them. But the unions apparently are able to, under legitimate union objectives, and that hurts. I didn't know that when I went down there. They knew the law. They knew every bit of the law as they taunted the state police, and I certainly have learned a lot about the law since then. So I urge you, I urge you to do something, and I wish you would do it quickly, because you don't like what's going on, I know you don't, but it does. I don't like to turn it around to where it is just what has happened to me, but I am one of those people that it has happened to, and I know my wife gets scared to death, and my son has certainly been affected by it.

But yes, I have had problems after that. I'm—I was a runner. I can't run. I'm fat and I wasn't fat, and it's just hard to get about, and now I like to play squash. Anybody play squash. Now I got to wear this stupid thing, and how would you like to wear that? I don't like to wear that thing. So I thank you again for being here. I hope you will pay heed in trying to do what we are talking about, and I appreciate what you are trying to do.

Thank you.

[The statement of Mr. Wohlsen for the record follows:]

STATEMENT OF ROBERT S. WOHLSEN, SR., PRESIDENT, WOHLSEN CONSTRUCTION, INC.

My name is Robert S. Wohlsen, Sr. I am the president of Wohlsen Construction Company which is a large general construction firm located in Lancaster, Pennsylvania. My family is in its fourth generation in the construction industry and I have worked in construction for over 50 years myself. We have an annual volume in excess of $20,000,000 and conduct business throughout the mid-Atlantic region. We are a member of Associated Builders and Contractors. Our company is non-union because of our employees have chosen to be non-union. As a general contractor, we regularly employ hundreds of subcontractors throughout the course of a year. In terms of dollar amount, the work of our subcontractors often exceeds the value of the work that our company actually handles on the project. Our company has a firm, long standing and well-known policy of awarding subcontracts to contractors regardless of whether they are union or non-union. By that I mean to say that as a non-union general contractor we do not ever insist that all or any of our subcontractors be non-union. Our company has always awarded subcontracts on the basis of ability, experience, reputation and price. We work in peace and cooperation with union and non-union subcontractors and their employees.

I offer this introduction to demonstrate that we are not novices or naiveties to the construction industry. Nor are we "agitators" or "troublemakers" seeking to do battle with the unions. Our position, attitude and reputation in the area of labor relations policies makes the incident of violence which I am about to describe even more incomprehensible and horrifying.

On May 3, 1983 we were awarded a contract for the construction of a new wing to the Brandywine River Museum in Chadds Ford, Delaware County, Pennsylvania.

On June 1, 1983, we actually commenced work on the site. On June 7, 1983 approximately 70 pickets from the Philadelphia area Building and Construction Trades Council were bussed to the site and commenced picketing. The pickets caused a tremendous amount of disruption and were continuously denying us access to the public roads which serviced the construction site. The pickets prevented visitors from entering the museum as well. We notified local police and the Pennsylvania State Police. We also requested that the State police be present the next morning in order to control the pickets.

On June 8, 1983, I went to the job site along with our project engineer Kevin Snoke, Ron Epps the camerman and our company's labor attorney, Harry R. Harmon. We arrived at the intersection of U.S. Route 1 and Old Station Road where you must turn to get in to the museum. Approximately 70 pickets were lined up across the intersection preventing any kind of turn onto the street. Several of them beat on our car and one or more of them poured a white liquid all over our windshield. I might add here that U.S. Route 1 is a very busy, congested four lane highway. By abruptly stopping our turn onto the secondary road the pickets were not only putting us in danger but, creating a very dangerous obstruction to unsuspecting oncoming traffic as well.

Our car finally made it through the pickets. We then drove back the road approximately ¼ mile to the actual location of the construction project. We got out and Kevin Snoke and I went to call the State police and find out why they were not at the site. Our construction crew and men would be arriving shortly and help would be needed. Ron Epps and Harry Harmon went to take pictures of a second picket line which had been set up along another public access road.

Within a few minutes, I started to return to the car. I immediately noticed that a group of hostile pickets were attacking Harry Harmon, our company's labor attorney. Mr. Harmon was not offering any resistance but rather was letting the union men alone and they were pushing him along the road. Our video tape camera, run by Ron Epps, has some footage of this particular episode. I ran to the assistance of Messrs. Epps and Harmon and also yelled to Kevin Snore to come along. I proceeded to take a picture of a union picketer throwing hot coffee over Mr. Harmon's head and took pictures of several of the men who had attacked Mr. Harmon. At that point in time one picket came up and stood two inches in front of my face and spit in it. I took no aggressive action but rather stood still and remained calm. I was shoved a few times and then another picketer came up and began pushing me around very hard. He draw back his left arm, sidewinder fashion, and hit me along side the right side of my head, knocking off my construction hard hat and my eyeglasses. This same individual then shoved me again, and kicked the hard hat off the road and tried to step on and break my glasses. A few moments later another picketer ran up and spit directly in my face again. Then he struck me in the face. Next he and another picketer grabbed me and threw me to the ground where they began to kick and punch me around my head, stomach and back. While they were doing this another group attacked our cameraman and pulled the video tape camera off his shoulder, tore it from the recorder and threw it on the ground. Next, they picked up the video camera and ran away with it. They also tried to get the video recorder with the tape cassette in it but we managed to put it in the car and lock it up. While I was down on the ground one of the union pickets reached in my coat pocket and stole the camera that I had been using to take pictures.

The picketers then stopped beating on us and returned to their picket line which was approximately 20 yards away from were we were attacked. Several of the attackers jumped in cars and sped away. Within five minutes one of our company trucks arrived and attempted to cross the picket line. The pickets threw rocks at the truck and hit it with sticks while cussing and threatening the occupants. I learned later that the same pickets had tried to physically drag our project superintendent from his pickup truck. They stole his brief case, tools, jacket and hard hat. Finally, the State police arrived at the scene. We had difficulty in getting them to come. They did help our men gain access to the construction site. A short time later while preparing the leave and return home to our office we saw approximately 40 pickets surround one of our trucks which was pulling a trailer loaded with a backhoe as it turned off Route 1 onto Old Station Road. These pickets used knives to cut the hydraulic brake lines on the trailer. The pickets also used ice picks or "shivs" to puncture several tires. I have submitted to the committee sworn statements from myself, Kevin Snoke and Paul Swearingen which I would like to have included in the formal record of this hearing.

When I returned home I went to the doctor's office because I thought I might have a slight concussion. I also had pain in my back and arm. The examination revealed that I did not have a concussion. The Doctor advised me to take it easy and if any other problems developed to contact him. My head continued to hurt and finally, on July 4, 1983, I went to the emergency room at Lancaster General Hospital and met with Drs. Esbenshade and Hoke. I was immediately diagnosed having a subneural hematoma and was operated on in three days. While recovering in the hospital from the first operation I suffered a seizure and/or fainting spell and fell which caused a very serious brain hemorrage

After over three weeks in the hospital, most of it in intensive care, I was released. I spent another four weeks recuperating at home. Now I am back at work but I am not yet "back to normal". There are many things which I still cannot do. My business and personal life have been impaired.

Prior to June 8, 1983, I had never before been physically assaulted. It is a sickening experience. My medical bills, lost wages and other expenses associated with the attack which were in excess of $50,000 do not begin to even approximate the true damage to my person, my family and my business.

I would not pretend to know more about organized labor and this country's labor laws than what this distinguished committee knows. But I do know that I have never seen or experienced such a total and blatant disregard for the law and for the most basic of all human rights. No union, no individual, no matter how politically strong they may be, should have the power to be above the law. No one should be allowed to hurt another human being or to disrupt or attempt to destroy another person's business. If I committed a crime I would expect to be punished. Furthermore, I would in fact be punished. Why should a labor organization, its leadership and its members be any different.

We have had picketing on several of our projects Everytime we call the police we are told "there is nothing we can do" or "we can't do anything until the court issues an injunction". Meanwhile, violence, vandalism, extortion and shear terrorism are allowed to continue. If Federal law created the various rights for the unions then the same body of law should also regulate labor's behavior and punish its misconduct. As a citizen and as a businessman I should be free from the type of problem that occurred on June 8, 1983. It is obvious that something needs to be done to further protect our rights.

Thank you.

Mr. Crane. Thank you, Mr. Wohlsen, for your testimony.

I might state parenthetically that on this particular chart you see here, the incidence of labor violence are broken down fundamentally into two categories, manufacturing and nonmanufacturing and the construction industry, however, has seen more than its fair share of labor violence.

The slash lines at the bottom represent just labor violence within the construction industry alone.

That leads me to say that we are going to go out of order here in terms of our witnesses, because I would like to have Mr. Sigmund Kaye, who is a Philadelphia contractor, speak next. He was renovating a house with nonunion workers, and they were driven off, and the house was wrecked by 15 burly men in a grey union-owned bus, and Mr. Kaye was beaten up by the same men, that day. The police linked the bus to other scenes of intimidation that we have already heard from Mr. Wohlsen.

The reason I am rearranging the schedule for testimony is Mr. Kaye, I believe, just got out of the hospital yesterday, was it not?

STATEMENT OF SIGMUND KAYE, PHILADELPHIA CONTRACTOR

Mr. **Kaye**. Yes.

Mr. **Crane**. In the event that these hearings this morning are more than Mr. Kaye can take because of his recent injuries, we want to make sure that we have his testimony on the record. So Mr. Kaye, before, though, you proceed, I would like to introduce two more of my colleagues, Congressman Tom Bliley at the far end of the dais here, and Congressman Bilirakis, and I appreciate your appearance, gentlemen. If you would like to make a brief comment welcoming the witnesses before Mr. Kaye proceeds, please do so.

Mr. **Bliley**. Well, I certainly thank you, Phil, for your efforts in putting this together, and I certainly thank you folks for coming and at considerable inconvenience and expense to put this story on the record. We need to develop a record so that we can persuade our colleagues to enact bills to do something about this.

Mr. **Bilirakis**. Mr. Chairman, I, too, want to commend the witnesses for the great courage that they are showing by being here today. One of the most profound experiences that I have had being up here, I have been up here a little better than a year now, is the vast knowledge that we gain in this job, the fantastic amount, the myraid of subject matters. I was a member of a labor union for many years, coming from Western Pennsylvania, the Pittsburgh area at one time, and of course, I have been on the other side of the fence for many years, too. I guess I thought I knew it all when it came to that area, but I had never seen things like this, and it amazes me that they do go on. I appreciate very much your sharing that experience, as unfortunate as it was, with us.

Thank you very much, Mr. Chairman.

Mr. **Crane**. Thank you.

Mr. Kaye, would you proceed?

Mr. **Kaye**. I would like to thank you for this opportunity to appear here and state my point of view.

I am a partner in a small development company, association, that we buy shells and renovate them, turn them into apartments.

On or about August 10th of 1983, I was informed by my general contractor that a busload of union—I'll refer to them as a "goon squad," appeared on our jobsite and told my workers that they were done for the day and that they should contact my contractor to come to some type of terms. My contractor did contact the business agent of the union involved, and they did come to some kind of agreement where they were going to hire part-time union help.

Two weeks later, when I was—one morning on my way to check on the job, I noticed that my men were not there, but I did notice that this same grey bus was in front of my property, at which time I knew only from hearsay what this bus was and did not elect to immediately go to my property. A few minutes later, I heard loud noises coming from inside and went to the door and saw approximately 15 men tearing the inside of my property apart, at which time they stopped tearing the property apart and started beating upon myself. They said that I should, for my own sake, get away; this had nothing to do with me, they said that they had a deal with my contractor; he did not pay up, and this is what he gets. They did not at this time know that I was the owner of the property. They thought I was just a passerby. After I was—after the incident, I managed to get the license plate of the bus, and the police later traced that to the ownership of the carpenters' union, the establishment was made from the bus was definitely owned by the union.

After getting out of the hospital, I spoke to my contractor, and he spoke to the business agent, and he was aware that the goon squad was at my site but was not aware that the person that they had beaten up, which was myself, was one of the owners, at which point the business agent made a deal with my contractor stating that, well, for restitution, "We will give you union workers for free in hopes to make up for the damage that they had caused."

I have photographs of damage they caused, not only to my property, but to myself.

Several weeks had gone on, and I started experience extreme amounts of pain which led to an operation which I just got out of the hospital yesterday. Excuse me. I, as an American citizen know, do not believe that they should get away with this, okay? I have worked with the Philadelphia police department, the DA's office, the United States Attorney. No one has made any efforts to bring about any restitution.

The police have done absolutely nothing. They have made the contract, the linkage with the union, you know, the license plate to the ownership, and that's as far as they've gone. They will not go any further. The FBI cannot get involved because it's not a Federal crime. The United States Attorney won't go near it. They thought they were calling a bluff. So I said we are coming to testify here, and they said good luck to us, and that was all. We cannot get any cooperation from the authorities. I'm hoping my testimony here along with the other people here can try and get some Federal jurisdicton in combatting these crimes, because nothing is being done on a local level. Nothing is being done.

I don't know what else I can add other than the amounts of pain and discomfort that I have been in since August. You know I have just come out of the hospital for the operation. I lost the use of my left arm which I am getting back, but my wife has been threatened. My day-to-day existence is threatened because I'm afraid to go to my own job site. I don't know who is going to be there. I don't know if anybody is going to be there, and when I get there, I don't know if I am going to have any protection. I just feel as thought it's a hopeless case as far as any protection is concerned, because the Philadelphia police department are not willing to do anything. So I'm hoping that Federally we can do something, and I thank you for taking your time, for coming here and trying to get something done.

Mr. CRANE. Mr. Kaye, it's all of us here who can thank all of you witnesses for the courage that you have demonstrated in coming to these hearings, and let me reiterate once more the fact that three of the witnesses that had previously indicated they would be here to testify in the 11th hour bowed out because of threats and further intimidation they would receive if they went through with our invitation to proceed. I am sure that our witnesses present here today have had that same experience, so we owe you a great deal of gratitude. Hopefully legislation introduced on the Senate side by our colleague, Senator Chuck Grassley, which is slowly making its way through the legislative process in the other body, will be successful there and our colleague, Ken Robinson on the House side, has a companion piece and has been in the vanguard of seeking to get the reforms that you seek and all of the reforms that Americans seek in the process of fairness and justice.

It is a slow process, but believe me, you are making a powerful contribution.

Let me turn our list now to Mr. Horace Guyton. Mr. Guyton worked as a New Jersey janitor. His union struck Wheaton Industries in May of 1983. He went back to work after the union leadership stonewalled him on reasons as to why they were insisting upon a work stoppage, and his house was subsequently vandalized and he was threatened with a knife, he was told he was on a hit list.

Mr. Guyton moved, and the threats kept up. He knows his phone and license numbers are displayed at union headquarters, and while the strike has since ended, the persecution continues. Mr. Guyton, we welcome you before the committee this morning.

STATEMENT OF HORACE GUYTON, NEW JERSEY JANITOR

Mr. GUYTON. Thank you.

My name is Horace Guyton, and I am employed as a janitor for Wheaton Industries, New Jersey; the Glass, Pottery and Plastic Allied Workers Local No. 219 used to represent me at my plant.

In May of 1983, the union went on strike against Wheaton, and I chose not to participate because of my family's financial needs and the fact that the employees were not allowed to vote in the strike. Almost immediately after crossing the union's picket line, the abuse began. The initial name calling, that was to be expected. However, the union went much farther. My house was surveillanced, my wife was followed on a few occasions; her photograph was taken by an angry striker who threatened her and my children. On a number of occasions, I was physically threatened when attempting to go to work. Once a striker brandished a knife at me, threatening to cut my throat, kill me and et cetera. Another time I was struck by a brick by a moving vehicle. The truck had a sign in the back with the local union's numbers on it.

The union published a hit list. They call it a scab list, but it's known throughout the community as the hit list. It's posted at the union hall. It is issued out to the workers, and on a number of occasions, I have moved more than once, twice, in fact, and by what I hear and by the list that I have seen, they updated it both times, and how they got my new address, I still don't know.

My photograph is at the union hall with my address, my picture of me, then there is separate pictures of my wife and kids with phone numbers and addresses on it. The strike settled a while ago, but it still hasn't changed too much. No one has anything to do with me. If I go downtown to a supermarket or something where I hear the name callings, the threats. People are constantly coming back and saying certain things that the union will say they don't like the idea of me coming there, but there is nothing they can do about it. If I was single without a family, maybe I would deal with it a little bit differently, but I have a family, and I work usually from 55 to 60 hours a week every week, and my wife is home normally by herself with my kids.

Even with a phone, still, you get no piece of mind knowing what is going on at your home. It's not the fact that I couldn't vote on the strike, but it's just the fact that I needed the money, and we all have a right to act the way we feel. If I feel like I want to work, that's my right, to work. I cannot see the union threatening me that I am going to lose my job at the end of the strike. That didn't scare me, and that had no bearing for basically how I feel, but I know if I don't work, me and my family will not eat. They did not say that they would pay my bills, give me milk, pampers for my kids. They didn't say anything like that at all.

At the beginning of the strike, the first day of the strike, I went to my union hall. I spent all day there. They wouldn't even speak to me; they wouldn't say a word at all. I'm paying $15 a month in union dues, and you can't tell me something? One man comes into town, they say, go out on the picket line, which three weeks ahead of time they were saying they were going to strike. By the hours that I work, I couldn't attend any of the union meetings, because the meetings are at night, and I usually work from 4:00 in the afternoon until 1:00 at night. That may run into 5:00 in the morning. When I started working there four and a half years ago, I asked my shop steward, "How will I know something that I would need to know?" He said, "If something happens, I will let you know." I never had anything told me. That's why the first day of the strike I went to home, and I talked to no one. The second day I went to my company, and they did talk—they let me know what was going on, and basically, if I wanted to work, I can work, and that as long as I am working, and in the place, and on the grounds, they will not let anybody bother me. We have our own security. They would pick me up away from the plant, bring me into the plant and pick me up going out. I would like to stress that you take, like him, and this goes on, you can see the evidence, and I don't understand how come it takes—it's taken up to '83 to '84 for something to be done. I can't understand why wasn't something done a while ago.

Now, this is physical, and you can see it, but no one stops to think what about the mental part? You don't have to see a broken arm or a broken leg to say, well, something is going on. Mentally, something is going on, too, and it may not bother you as bad now, but after you go a good, long period of time, fear, looking over your shoulders, wondering what is going on with your family and your kids, normally, nine times out of ten, that will get to you sooner or later.

I would like to stress the fact that me as being a male, being harrassed and abused is one thing, but the abuse that the women take, especially the single parents, women, it's outrageous. There is a lady who works at my company but at a different plant. She honored the strike up until a week before everyone else went back to work. Her and a few other people are getting death threats on the phone, letters, death threats, the obituaries, this is constantly going on. Their homes as well as mine, bottles and glass being broken against the home, paint. I have met single women with four or five kids, one lady in particular, who quit because someone shot an arrow at her son as he was coming home from school.

And this is still going on. Like I said, the strike is over. This is one lady who they are about ready to put her in the mental institution now because she is having very, very bad problems.

The local law enforcement, they're not doing anything. I have had a knife waved in my face, my life threatened. I called the local police. They referred me to the sheriff's department. The sheriff's department came, after staying out in the picket line with the strikers for about 45 minutes, they come up to the building and they tell me that if the strikers call and say I am saying anything to them, they are going to come back and lock me up. That was it. Nothing else was said, done or anything.

I'm in the community. I'm not rooted in. I have only been there for, like, five years ago. If something happens to me like this here, who can I call? I can't call the local police. I can't call the sheriff's department. They have already shown they won't do anything. I am on my own. If I do anything to retaliate, I'll be the one in trouble. So I am supposed to sit there and get my throat slashed before I can get any kind of work? This is a disease. I don't think people look at it like I do, maybe, but this is a disease, and this is the first step of a cure, and if a cure isn't here in a while, then maybe it will go a little bit further, maybe you will have a couple of throats slashed. I don't think anybody wants that, but it's here; this is evidence; it is here. I, for one, would like to leave the community I am in and leave my job, but unfortunately, I cannot afford that.

So I am going to keep working like this, in fear. Emotionally, I don't know how long I can take this. I have brought this problem home to my wife. I feel she is having problems from this, too, especially from the way I feel a lot of time—the anger that I have. I have never struck my wife, but I have caught myself almost in the process of doing that, and when I sit down and think about this, think about this, it stems from this. I can't do any normal functions from this. I am constantly thinking about what I do if someone jumped my back. If I go get a friend of mine to retaliate, I would be wrong, which would be stuped, it won't solve nothing, but when you are in a situation like this, you want to think about myself, too, and my family, too.

I don't really know what I am going to do at this point, any one time, but I can't help but think I can only go on like this for so long. I have sought help like psychiatrists and what not, but still I don't see that doing any good. I am just legally closed out in that community. It's bad. I have no friends there. I don't trust anyone. Race has nothing to do with it, and it's not just the people in the union. It's a lot of people that has nothing to do with it, but they are sympathetic for these people.

People I used to speak with before this all started don't say anything to me at all, not one thing, but something needs to be done. Even though I do not have a little fear of coming here, like I said before, if I don't do something to help, then I feel like that's just one less vote that's not cast in this ballot to get something done, and then I feel like I will have something over my head later on in life.

If I do leave my job now and go somewhere else, I may go through this again. I have children. I don't want them to go through this in life. I would rather go through it now rather than to see them through it later on this life. Something has to be done. I don't know if Congress will pass this Hobbs Act, but I am praying they will, and I wish everybody else gives you a prayer to get through this before something bad comes out of this, not only in this part of the country, but other parts where it is worse than this.

Thank you.

[The statement of Mr. Guyton for the record follows:]

STATEMENT OF HORACE GUYTON, JR.

My name is Horace Guyton and I am employed as a janitor for Wheaton Industries in Millville, New Jersey. The Glass, Pottery, Plastics, and Allied Workers, Local 219, AFL-CIO represents the employees at my plant, including me.

In May of 1983, the union went on strike against Wheaton and I chose not to participate because of my family's financial needs and the fact that the employees were not granted the right to vote on whether to strike or not.

Almost immediately after crossing the union's picket line, the abuse began. The initial name-calling ("scab," "nigger," and so on) was to be expected. However, the union went much higher. My house was surveiled; my wife was followed on a few occasions; her photograph was taken by an angry striker who then threatened her and my children. On a number of occasions, I was physically threatened when attempting to go to work, once by a striker who brandished a knife and said he was going to "get" me.

Another time, I was struck by a brick thrown out of a moving vehicle. The truck had a sign in its back window with the union's name on it. Glass bottles were shattered against the side and front of my home on several occasions, making it dangerous to walk around.

The union published a "scab list" which included the names and addresses of the employees who had chosen to return to work. This "hit list," as it has become known at the plant, was placed on a bulletin board in union headquarters and distributed to strikers. In my opinion, it was an invitation to strikers to commit acts of violence on people who crossed the picket lines. I know of a number of other non-striking employees who have also been harassed and terrorized. Out of fear, I moved, only to find out that the union updated the list by providing my new address.

I have been told that my photograph and automobile license tag numbers are also on display at the union's headquarters.

The strike settled a few months ago but the abuse has not stopped. I am still greeted by racial epithets and have been advised by an acquaintance at the plant that one striker still vows that I, and my family, are "dead" regardless of the outcome of the strike.

I believe that the kind of continual grinding abuse and degradation that I have been subjected to goes beyond the bounds of human decency. Worse yet, bringing my family into it has created a climate of fear and paranoia. I hope that the Congress can do something to prevent other families from having to go through what mine has had to go through over the past six months.

Mr. **CRANE**. Thank you, Mr. Guyton.

Let me say that Senator Grassley, who I mentioned earlier has introduced legislation which is working its way through the Senate side at the present time, Senator Grassley had originally anticipated being here to testify this morning, too. He had a conflict, and because of the conflict was unable to appear, but he had submitted testimony for the record. In addition to that, we have two additional colleagues who have come in. One I made reference to earlier, Congressman Robinson from Virginia, who has the companion piece to Senator Grassley's legislation and who has been in the vanguard of carrying this fight for labor legislation reform.

Gentleman, if you could come on up here and take seats, we would like to have you join in and participate. We have one more witness to hear from and then we can get into questions.

Let me say also as a tribute to the Virginia delegation that our colleagues from Virginia, I think, at least I can speak for the Republican side of the aisle, and I don't mean that this is a partisan thing, but I think they are all cosponsors, are they not, Ken, of your legislation?

Mr. ROBINSON. That is correct, Phil, and I want to apologize for not coming up to join you this morning. I am unfortunately triple-hatted today, and I am going to have to go to a couple of other places. But I certainly can appreciate what's going on here, and it means a lot to the effort, I can promise you.

Mr. CRANE. We thank you, Ken.

We have two additional colleagues here, Congressman Nielson, and Congressman Walker, who is from Pennsylvania. And I would yield at this time, gentleman, is you would like to make a brief opening statement and any comments at this point.

We have heard thus far from three witnesses, and we have the last witness yet to be heard from. I have been told that her's is a very pointed story, too. But Congressman Nielson, would you care to talk to the witnesses?

Mr. NIELSON. I just happened to be here. Sorry I wasn't able to be here earlier. Looking forward to hear your statement.

Mr. CRANE. Thank you.

Mr. Walker?

Mr. WALKER. I would just congratulate you on holding the hearings. I am sorry I wasn't able to be here earlier. I think this is an extremely important topic for us to be addressing here in the Congress. I think the kind of things that we have seen happen across the country in terms of labor violence are not in the tradition of labor-management negotiations. There has got to be something where Federal action can be taken, and I think that this can spur Federal action.

Mr. CRANE. Thank you.

Our last witness is Mrs. Cher Mungoven, who is the wife of a protected witness. Now, that is something that I was not wholly conversant with until I read a little bit about Mrs. Mungoven's experience. Her husband Walter had a $2 million a year construction business in Hawaii. He paid his people union scale plus.

He testified in a Federal probe about illegal union actions on the islands against his company, and he was repeatedly threatened, and I mean with threats involving, as I'm sure perhaps every one of the witnesses here has received, serious threats on his life, and this was in no small measure, because of his willingness to come forward and testify. He is now classified as a Federal witness and under the Federal Witness Protection Program. What this means is he has been sequestered to protect his life, and his wife, Mrs. Mungoven neither knows where he is, nor what identity under which he is travelling today as a means of the Federal Government's attempts to assure that no harm will befall him as a result of having come forward to testify in that probe.

So Mrs. Mungoven, I welcome you before the committee, and we deeply appreciate your being here.

STATEMENT OF CHER MUNGOVAN

Mrs. MUNGOVAN. Thank you. I am going to partially read from some various statements that I have made to people recently, because I am lacking from a lot of sleep this week, so I want to make sure I get everything in chronological order.

In January 1983, I didn't know where Washington, D.C. was on a map. I didn't know who our Hawaii representatives were in Congress. I had been told by the government what the Hobbs Act was, but I had not read it, and I wasn't familiar with it; and besides the President of the United States and Senator Kennedy, I didn't know one other person in government.

I wasn't born in this country, and I didn't know how the system of government worked. If someone had told me that I would have spent five months of 1983 in Washington and told me that I would see my husband for about 20 days last year and speak to him only periodically on the phone when he has enough money to call me; that I wouldn't know where he is or who is he any longer, I would have been the first one to laugh and tell them they were crazy.

Mr. **CRANE**. Excuse me just a second, Mrs. Mungovan. Can you speak just a little bit louder? I don't know whether that mike is picking up, but to make sure that everyone hears your testimony.

Mrs. **MUNGOVAN**. We had problems with the unions, Hawaii's Carpenter's Union in a place that is supposed to be one of the ideal places to live in this country, Maui. We started our business in 1979, and it was a year before the picketing started. Walter had been a union carpenter for approximately ten years with this Hawaiian Carpenters' Union and prior with a union in Massachusetts. He was only doing small jobs when we started our business and trying to build up his business and his reputation, and he wasn't doing any of the type of work that the union normally did.

Walter Kapau, who is the head of the Carpenters' Union, had stated in a lot of press conferences in Hawaii that he was going to wage a war against non-union contractors in Hawaii. So we know that in September and December 1980 when we signed contracts to build three custom homes that we would encounter some kind of problem.

The inevitable letter arrived the first week of December. It is a standard form letter charging us with paying substandard wages and having substandard working conditions. It asked us to provide the union with all our payroll and employees' records and information. We ignored it, because we felt that that information was confidential, and we didn't want the union harassing our employees at home.

Everyone knew that Walter paid his men top wages plus benefits, and at that time, we were paying our carpenters $15 an hour plus numerous benefits and health plans, and the union at the time was paying 11.05 an hour plus benefits. We got over 100 calls per week from people wanting to come and work for us, and they certainly didn't want to come in and be paid to work for substandard wages and working conditions.

After ignoring the initial letter, we got a call from our business agent with the Carpenters' Union, who wanted to meet Walter. When we went to meet him, he told him that he had to sign a contract. Walter said that after he had built up his business and got a larger bonding capacity so that he could bid on commercial jobs that he would sign a contract probably a year from now.

The guy told him that that was not good enough, he had to sign that week. He said they were going to get all non-union contractors in the State of Hawaii to sign union contracts. They just wanted to start with him, and if they could get him to sign, everybody would just fall right behind him.

The business agent cited one particular contractor that they were going after at the particular time non-union, a five-union condominium. He said they were going to get him, to quote, "To sign up no matter what, even if we have to torch his jobs."

At all the meetings Walter had, all the business meetings with business agents, he carried a microcassette recorder, because we were concerned that mysteriously, all our jobs would be burned, and they don't leave notes saying they did it.

In December 1980, we got another letter from the union telling us they would picket us if we didn't hand over the information. On January 6, the picketing started on three of our jobs under the pretense of informing the public of substandard wages. We went to the National Labor Relations Board in Honolulu where Walter demanded to have a federal election held among his employees.

The election was held in February, and it was unanimous to stay non-union, even though about eight of our employees were carrying union cards with various unions. We went to federal court and asked for an injunction. We filed charges against the union for illegal picketing, and we asked the court to give us an injunction to get the picketers off our job sites until we could get an NLRB hearing.

The case was not heard in court, because the NLRB had not filed any of my husband's applications even though they had filed all the ones the union had signed. A new attorney was assigned to us to the NLRB. He told us not to give any information to the guy who ran the NLRB at the time in Honolulu, because all the information and documents we were providing were being shown or given or told; that the union was being told about them before they went to the Regional Office in San Francisco.

He also told us that the head of the NLRB was scared of Kapau and the union because Kapau had threatened his life before during another case.

We demanded to have another hearing or an injunction and at this time filed secondary charges of boycotting against Kapau and the union because they had been threatening our suppliers with cutting off all our purchases by union contractors if they continued selling products to us.

The second time we went to federal court, the judge seemed to be completely disinterested in hearing the case and seemed to be reading Time magazine. He refused to listen to additional secondary boycotting charges, and he dismissed the case, again, based on double jeopardy.

Three months had passed at this time. We had had picketing on our jobs six days a week. They had been stopping deliveries, blocking the entrances to our jobs, obstructing workers and subcontractors, harrassing and threatening our employees and costing us thousands of dollars in trying to complete our projects.

We demanded another court hearing, and this time we produced for the NLFB the microcassette tapes, which was the first time that anybody besides Walter and myself knew about them. The tapes proved beyond a reasonable doubt that the union had never had any picketing to protest any substandard wages. They also proved that the union didn't care about the outcome of any federal elections amongst the employees and Kapau had said that he would tie us up in court forever regardless.

Within a couple of hours of giving the union transcripts of the tapes, Kapau went to the NLFB and said that we wanted to settle the case, didn't want to go to court. We didn't have any objection to going to court. We objected to them deciding, but the NLRB said we didn't have any choice, and it was cheaper for them not to go to court.

We took the tapes to the Organized Crime Strike Force in Hawaii, and then sent them to the FBI. After they investigated what happened after four months of solid pickets, the U.S. Grand Jury held hearings and tried to get indictments, and they got indictments in November 1982 against a dispatcher from a concrete company who was guilty of secondary boycotting and also against two business agents who had lied on affidavits and in sworn testimony; indictments—this was in November of 1982.

We were told by the government that although there were threats of violence made against us, our employees and their families by union members and agents, and although we had witnesses, that the government could not prosecute them because of a loophole in the Hobbs Act created by the *Enmons* decision.

For the past ten years, unions all over this country have been able to use violence and extortion against employees and employers all over the United States without fear of ever being brought to court on a federal level. Some states have laws which the unions say allow them to be prosecuted on a local level, but the record shows all over the United States that the number of times this has happened can hardly be accounted for. There is too much pressure on the state level to ignore the misdeeds of union members, and, as we found in our particular case, we cannot rely on the local agencies. We did not, and we do not today question the union's right to picket legitimately.

There are many instances, I am sure, where employees are unhappy with their wages, their benefits or their working conditions, and with the help of a union, those standards can be met. We do not suggest that all the unions are guilty of wrongdoing. We only object to the use of violence, or the threat of violence to extort a contract by certain union individuals.

Before Christmas, a reporter came out to Hawaii to write a story about our case for a major magazine, and in talking to our former employees, the one thing that was repeated by each of them was, "No one from the union ever came and talked to us about anything. They never came and asked us if we were unhappy with our jobs; whether we were treated badly; felt we were underpaid. They weren't interested at all in any of the employees. All they wanted was to get Walter Mungovan to sign a contract or they would put him out of business. We wish that we could find another employer who would be as good to us as Walter."

Do you know what it is like for your employees to have their lives threatened, to call the police and wait for an hour for them to come, and then have an officer tell you that the picketer is a relative of his and he doesn't want to make out a report?

Do you know what it is like for our employees to have their families threatened and nothing was done about it? Do you know what it felt like for Walter, who was talking constantly with the union officials in a desparate attempt to protect his business, to protect his family and then have a union agent on the picket line not to talk to him because police told the agent he was carrying a tape recorder?

Do you know what it is like to have an employee's wife call in hysterics because she is stranded at her home and has just got a call from someone saying that they have just broken her husband's legs, all because he was working for us and all the time he was just fine working on one of our jobs?

Do you know what it is like to pick up a telephone and have someone threaten our life or to have a caller threaten to bomb your house or your job site or to get letters in the mail threatening our life or that of your spouse, or to wake up and find vehicles in your driveways that have "scab" painted all over or paint etched out with a knife, and to have the roof slashed to threads?

Do you know what it is like to have your child answer the telephone and have someone say that they are going to kill his father or his mother or your husband or your wife? Or to think for four months that you are filing charges against these offenders, calling the police at least every other day to your job sites, and then find that only three reports were even written up, and these were classified as harrassment? To go to the Prosecutor's Office and be told that they won't prosecute because they have been classified as a misdemeanor? I don't consider threatening somebody's life to be a misdemeanor. I don't consider carrying a gun on the picket line to be a misdemeanor. I don't consider threatening to blow up my house to be a misdemeanor, but it was until January of last year.

In January Walter was pulled over in his truck and read his rights by a police officer. He was told he was being arrested for terroristic threatening of one of the picketers that we had got indictments against. As this incident was a complete fabrication on the agent's part, Walter demanded to take a polygraph exam. Although it is not admissible in court, it would have cleared him as far as the police department was concerned.

But we were told by the police department that the polygraph machine was broken. We kept calling to take the exam. We were later told that the examiner had gone on vacation. Things stayed that way until an article came out in the Honolulu paper about Walter having gone on the witness security program. That day, I was called in and asked if Walter could come down and take a polygraph. He hasn't been there since. That case is still pending.

But you can't know what all this feels like. It doesn't happen to you. You don't know what it feels like to have your business acquaintances tell you that they heard there was a contract on your life; or to be staying in a hotel with an assumed name with only two people knowing where you are and have men come to your room posing as FBI agents that want to try and take you away; and you can't imagine for one minute what it would be like to have your husband or wife disappear from your life in a matter of minutes. I was sitting in the witness room in Federal Court in Honolulu during a trial last July, and I went out of the room for a few minutes. When I came back, my husband was gone, and I saw him for about five minutes after that, and he has been out of the state ever since.

I have seen him only for a matter of hours during two trials at the end of last year and last month in Honolulu. Walter was put on the Witness Security Program last May, although the FBI had had him on the mainland since January of last year under protection.

The U.S. Marshalls took over in May, and since then, he has been on the program. This kind of thing is like having a child or one of your family members kidnapped and not knowing where they are or if you are ever going to see them again. It is very depressing and very sad and frustrating, and it's extremely lonely. It's so lonely, but I'm the lucky one. I'm free, for the moment, to walk around and talk to my friends and my family and my son, and I'm free to be here today to testify before this committee.

Walter doesn't have those luxuries in his life anymore. They are real luxuries. You don't realize how precious these things are until the time comes that you don't have them any more, and the most ridiculous thing is that Walter is innocent.

He never did anything wrong. He caught the union at their own game, and it's a game that they have been playing for a long time, especially in our state.

The only difference was that they got caught in the act, and all of this was for perjury. He is on the Federal Witness Security Program for perjury. God forbid if he had been testifying against them for something that was more serious. The unions have always professed in this country not to use violence or threat of violence in this country at any time. Yet they spend millions of dollars on the exemption that they have in the law at the present time.

If they don't commit these crimes, then I don't understand why they are so adamant about having the exemption, and that seems to be the real point here. The union continues to pursue us, although we don't have a business any more. They pursue us through the courts by filing unfounded lawsuits against us.

Already, the lawsuits amount to about $10 million right now, and I don't even keep track of them anymore. I would estimate that since the whole incident began in December 1980 that our legal fees have grown to in excess of $120,000, and I owe about $80,000 of that at the moment. We don't have the use of money that rightfully belongs to the 8,000 members of the Carpenters' Union in Hawaii to pay our fees, and this is what the union business agents and the boss uses to pay all their attorneys' fees. They have five separate cases in criminal court where they have had to have attorneys, and also civil suits. Six months after the picketing started, we laid off 18 of our 20 employees. We found that the contracts and the jobs that had been promised to us had been cancelled. The architects and the owners said that they were afraid to hire us because of trouble with the union.

We spent day after day for a year-and-a-half trying to get work. We have survived barely, and I mean really barely, for a year-and-a-half by relying on good friends for smaller odd-jobs, but it didn't help.

We have gone from having a consistent income to really having none. Meanwhile, all the loans and mortgages have to be paid, truck loans, equipment loans, property payments, insurance premiums, and office and overhead expenses to try and keep the door open while we are trying to find work.

We borrowed huge amounts of money from my parents to do all this, and we took all their savings. Now my mother—who, my parents retired from England in 1979 and moved to Hawaii, and my mother now works just to put food on the table. My father can't work because he is so depressed; he's in such a depressed state that I don't know if he will ever come out of it because of this.

We have lost two pieces of property in the State of Hawaii, and are in the process of losing my house because I can't pay the mortgage payments on it. We have lost numerous pieces of equipment and all our household goods. I have sold tools and equipment and even my wedding ring to buy food. I sold my car to pay the mortgage on my house. I drive a '67 Chevy that is worth about $300, and that's my only asset at the moment.

You know, this kind of thing is just not isolated to non-union employees. Union employees are subject to some of the same tactices. It costs us all money. All I have learned about the law in the past year, the most significant thing I have discovered is that as employers, we don't have a whole hell of a lot of rights in this country. We have got charges back in Hawaii now against the business agents with the same union.

In fact, one of the business agents is up on criminal charges, state criminal charges, which have been pushed by the Prosecutor's Department by people like myself and some other interested individuals. One of the business agent's bodyguard beat up a union contractor and subcontractor over there, so this is not just related to non-union employers.

We always thought that the NLRB was an unbiased agency and you have to go to them in order to have anything done when you get problems with the union, but we are required to go to them, and yet we had to wait for five months just to have a hearing in front of an Administrative Law Judge.

Meanwhile, we put up with the picketing, and that was the reason that we went and tried to get an injunction to get them off of our jobs. The Administrative Law Judge would come, and he would hear the complaints, and he doesn't make a decision right there. Had we gone before him, he would have notified us of his decision which would have been up to six months later.

So theoretically, we could have endured picketing for nearly a year and spent thousands of dollars on labor attorneys to file charges, and we still would have ended up today where we are now, with nothing.

The penalties, if we had had a hearing and had the union been found guilty of unfair labor practice, would have been posting public notice of their violations for 60 days. That's not a big deal to them, and it's definitely not enough for me, and, I know, a lot of other employers.

Something which I read the other day which struck me as being particularly close to our case was a statement made by Raymond Rogers, who represents the Amalgamated Clothing and Textile Workers, and he said that "unions were trying for the most part to solve 20th century problems with early 20th century tactics."

He suggested that their best plan of attack was not to strike, but to pressure suppliers and employers, and that that would cause them to achieve their goals long before strikes were necessary.

This is exactly what happened to us in 1981. We couldn't get deliveries because of union pressure on suppliers, and we live—especially in the State of Hawaii. We are isolated out there. We have no place else. We can't go across a state line and buy supplies and buy materials, and if you're a supplier in our state and you are told that all of your union contractor business is going to be cut off by the unions if you don't comply with the union's wishes, then you don't have any choice. And we had suppliers who come to us and said that, "We know that you can sue us and that it's against the Trade Act and a bunch of other laws," but, they said, "We don't have any choice. We have to take that chance that you are going to sue us because whatever you are suing us for is probably going to be a lot less than the amounts of business that we are going to lose if we don't supply to union companies."

After the indictments in November 1982, the threats and the phone calls that we got became worse. The FBI had instructed the local police chief to issue Walter a permit to issue a gun to protect himself. We don't have an FBI office on Maui, which is the island I live on, and also we can't rely on the police department for protection. We had to install surveillance equipment around our property.

I watched my husband go from a fearless man. He is six foot, seven. He's not a small person, and I watched him go from a fearless man to a man afraid for his life and afraid for his family. He left the house every day trying to find work carrying a .357 Magnum which didn't encourage anybody to hire him, I tell you.

He came home scared to death. He wouldn't leave the house at night, and he didn't sleep well. He said, "I didn't fight in combat in Vietnam to come home and be killed in a Maui cane field and not know who did it," which is what happens to a lot of people involved with labor racketeering in our state and also with gambling, and syndicate activities. There are people found dead in cane fields all the time. It is a favorite place drop people all the time.

He said, "In Vietnam you know who the enemy is, and in our situation, you don't know who is coming after you."

There is an awful lot of syndicate-related activity, but during the trial in May 1983, right before he went on the Witness Program, he was having terrible nightmares in the hotel, and for the first time in 17 years, the nightmares were about Cambodia. I was really scared for him. He changed from a very strong, happy man to, when I married him, to a man who was really affected by the unending emotional and physical stress, and I sat at night and watched him try to sleep and I wondered why this all had happened. Why did it happen to us? Walter, the biggest crime he had ever committed was telling the truth, and all of this has turned against us because we told the truth.

It would have been so easy for us to change all of the circumstances of all of this if we had been willing to go into court and lie and perjure ourselves.

We probably would have gotten a lot further than we have today, but the thing we have always prided ourselves on is that we have never ever lied about anything, but we ended up as the victims for all of this. For too many years in Hawaii, Walter saw the same thing happening to them as what happened to us. They have moved to the mainland because of the tactics against us.

We have asked these people to come back and to testify and to give evidence to the government, the federal government so that they can bring charges against these people. One of them was threatened with arson by Kapau on all of his homes. This is if he didn't sign a contract with the carpenters' union. He signed a contract and he eventually went out of business, and he went to the mainland, and he won't come back. He is scared to death to come back and testify.

This type of activity is a way of life for most of the unions of Hawaii and, as I said, all over the country. When I first came here, I went to see the Representatives from the State of Hawaii. I had to call home first and find out who they were, because I didn't know who they were, but I went and I saw Senator Inouye.

And Senator Inouye told me, As is demonstrated by your case—this is a quote—"Federal law providing for the policing of union activities is already very unsubstantial," and he didn't see any reason to make any changes in the law, and as far as I'm concerned, it's not enough.

It's not enough for my innocent husband who is forced to leave his family and his friends and home to live a life lonely existence because of a reported contract on his life over some perjury trials. It is not enough when I have to explain to my son that his father is gone from his life and that I don't know where he is or who he is, and it's not enough when it has caused the destruction of our business and our happy family life, and it's not enough when certain people in our society are exempted from the law that governs everyone else.

It's not enough when I can't justify—and I've tried to find some justification. During the five months that I was here last year and with all the people that I spoke to up on the Hill here, I told them, if you can justify this, give me one ounce of justification for any of this happening to us, and I will stop coming to Washington and trying to get everybody to listen to me and listen to this case and I will go home, because I would much prefer to go home and forget about this than it would to be here, but it's too important, and that's why I'm here.

I can't justify it when, for four-and-a-half months, the police didn't show up, like I said before, for hours. I can't justify it when our employees have their lives threatened on job sites and the police didn't file reports, some of the time, they said, because they were members of the union and they didn't want trouble with the Carpenters' Union.

This was the reason that they didn't file the reports. We have a former employee who had one of the reports misfiled come back from the mainland twice to get the police department to change the charges to what they should be, and they won't do it.

I'm from England, and England has more often than not been brought to its knees by the unions and troubles with the union, but they have never, ever had any cases of violence, arson, extortion or threat attributable to any of the union members. We have to ask ourselves, why? You know, union members in England believe in the goals and ideals of their union, and it gives them the strength that is needed to achieve those goals without resorting to violence and extortion.

Also, more important, it is against the law in England for anybody, anybody to engage in these kind of activities. England has a lot of faults, but there is a larger percentage of unions and members per capita than in our country, and maybe there is lessons to be learned from that.

I always say, the best thing that ever happened to England was Margaret Thatcher coming along.

One of the things that really upset me is that I have had to explain things to my son, who is 12 years old, and although I explain it in A, B, C, he doesn't understand. I don't understand how we can explain to our children in this country and to my son that the right thing to do is always tell the truth, when he sees what the truth has done to our family.

I don't know how to explain to him that one should not use extortion or violence against another person when he sees it used against my husband and his father and nothing was done about it.

I don't know how to explain to him that the police are supposed to be our protecters, that he can always go to them for help, which is what most people tell their children in this country, and yet my son has seen his father ask for help, and nobody comes.

I don't know how to explain to him that it is against the law to threaten another person's life when he sees it happen to his father and our employees, and nothing is done about it.

And I don't know how to explain to him that his father is no longer Walter Mongovan, but he is a number, a faceless name on the Federal Witness Security Program; that we don't know when he is or who he is. I don't know when he will ever see him again, and that is he living a life of bare existence.

I can't explain to him, because he doesn't understand. I don't know how to explain to him that the five men who were found guilty of perjury, and only perjury, are out on appeal; they are on the streets free, walking for another year-and-a-half during appeals, still working for the union, and still threatening other people's lives, when his father is the one suffering most from all of this.

He doesn't understand it, and he says to me, "But daddy didn't do anything wrong," and he didn't.

I was alone here from July until November last year trying to get a hearing before Senate and House Committees. Not because a decision on passing an amendment to the Hobbs Act will change anything that has happened to my family, but so that what has happened to my family does not happen to one more family in the United States. Many Members of Congress believe that if an amendment to the Hobbs Act is enacted, it will create an abundance of work for the U.S. Attorneys' Offices around the country. I contend that it's not a natural reaction in the country for anybody to run to the federal government for anything, and also to the U.S. Attorney's Office.

The first place that one turns to is to the police department, then to the county prosecutor, your state prosecutor or your state attorney general. I think that if the state or local authorities are then unwilling or unable to adequately deal with the situation, then one would have at least the option of pursuing any problems through the U.S. Attorney's Office, and this is something I consider to be a last resort, and if this law was put through, I think that maybe it should be put through as being a last resort, as being able to go to the U.S. Attorney's Office.

Today, employees in this county have no one to turn to once they have exhausted state agencies. As far as this issue and the Hobbs Amendment are concerned, both my husband and I feel that it is a violence issue and nothing else. If Members of Congress were exempt under the law in the same way that the unions are now, I would be sitting here today saying the same thing that I am saying.

We only ask for equal rights under the law and that the unions and members or people that they might hire be liable for their actions just the same as you and I are. We don't think that that is too much to ask for considering what we have gone through and are still going through today more than three years later.

For over three years, we have been fighting in the State of Hawaii, the largest and the wealthiest of the AFL-CIO United Brotherhood of Carpenters and Joiners of America. We are only two people, and we can't fight alone forever. We are not asking for the federal government to solve all of our problems for us.

We only ask that the law be amended so that we stand a fighting chance in this thing. Right now, we are not even afforded that luxury. Instead, my husband is gone, and I am still subject to telephone calls threatening to kill him.

Just before Christmas, my son and I received a death threat against us. I have had phone calls since my husband has been gone and one prior to him leaving against me, but I have never received a death threat like the one I got in the mail made against my son and I.

We still have to live with Mr. Kapau, the head of the Union. This man was convicted in March 1983. The first official was convicted of six months. In May 1983, two union officials were convicted of six months. This is on four counts of perjury apiece.

In September 1983, Mr. Kapau was indicted on seven counts of perjury and also lying in a criminal trial, along with a third business agent who was indicted on seven counts.

Kapau's trial was held in November last year, and it lasted two weeks. He was convicted on six counts, and sentencing was February 6 this year. He was sentenced to two years in federal prison, $10,000 fine and put on five years probation.

Suyat's trial was held January 30th, 1984, and he was convicted on five counts. His sentencing is set for February 14th. Walter Kapua walked away from his sentencing on Monday; this is Wednesday. I have been on a plane, and he walked out of court, and he said, "I'm not sorry, and I don't regret anything I did. If I had to do it all over again, I would," and he went back to run his union as though nothing had happened.

This is a man who is not—who thinks that any law in the country does not apply to him, and he doesn't think that although they live in the State of Hawaii and Hawaii is part of the United States, that they are subject to any of the laws of this country or any of the laws and rules and regulations of his national union of the AFL-CIO national. He runs the AFL-CIO in the State of Hawaii as he has done for 15 years, and Lane Kirkland asked him to step down because he was indicted, and he told Lane Kirkland to go jump in a lake. He said, "Nobody tells me what to do, I don't care who you are."

The thing that bothers me over the sentencing of Kapau is he is a convicted felon with a prior criminal record. He produced for a sentencing report letters of support and admiration from Hawaii Members of Congress and the local state legislators, and endorsements like that, which are so obviously politically motivated, I don't know how we can ever hope to live in a society free of union violence.

I am afraid to be from and representing a state where our own Congressional representatives choose to endorse those who advocate violence and threats of violence. But an FBI agent, when Walter was taken away, said to me, "Cher, you have to think of it as though he has gone to war, and don't look at it as though going on the Witness Program. Just look at it as if he has gone away for awhile."

I'm sorry, but we are not at war here. My husband is not in the army; he has not been at war for three years. He did that. He is fighting in his own country, the United States, the land of the free, and he is fearing for his life.

I don't understand how, in effect, any Member of Congress can condone the kind of activity that has destroyed my family, taken my husband away from me, and is still refusing to vote for an amendment to the Hobbs Act. In my opinion, we should never allow fear, which is what happens when we come up against unions, to become an excuse for not exercising our personalities or letting ourselves become a pawn, which is what we become, in another person's game.

Thank you very much.

Mr. CRANE. Thank you, Mrs. Mungovan. Let me just say one thing for openers, and then we will progress with the panel here with questioning. A point that Mr. Wohlsen made, and I think you have reaffirmed, Mr. Wohlsen said that he doesn't enjoy the same rights as unions do. A right is defined as that to which one has a just and righteous claim. No one has a righteous claim to beat up on another person, and the purpose of the law and justice is to guarantee that we can all walk in security against that kind of thing. Mrs. Mongovan has reiterated that same point.

I think we are all concerned with lawlessness and crime in this country. But this legitimized lawlessness and crime, and that is the thing that has to be addressed.

Congress has been remiss ever since that court decision that provided an interpretation of the Hobbs Act that was so considerably at variance with the intent of Congressman Hobbs.

I would just like to briefly introduce our chairman of the Republican Study Committee, newly elected last month, Congressman Bill Dannemeyer from California, who has joined us on the table.

With that, let me indulge the Chairman's prerogative and find out, throw out the first question, and it is based on your testimony, Mrs. Mungovan.

You intimated, and maybe stated categorically, that the NLRB in Hawaii took information that your husband provided them in registering his complaint, and they turned that over to the union officials?

Mrs. MUNGOVAN. I don't know that they actually gave them, they showed it to them. We were told by an attorney who had just been brought from the east coast to work over there, he said, "Don't hand anything" to this particular man who ran the NLRB at the time. He said, "He is calling the union and he is giving them all the information that you are supplying them which is supposed to go to the regional office in San Francisco, and he is telling them everything that you are doing."

We couldn't believe that the NLRB had not filed our affidavit. That is all they do for a living, is file affidavits in court. As far as we are concerned, they are not an unbiased agency.

Mr. CRANE. Do you know the name of that particular NRLB agent?

Mrs. MUNGOVAN. His name is Dennis McCarthy.

Mr. CRANE. McCarthy?

Mrs. MUNGOVAN. After we got indictments against the union, he quit his job or retired or resigned or did something, but as far as I know, there hasn't been any kind of an investigation of that. I don't know if there has been any kind of an internal investigation. I had been told that one time there had been an internal investigation by the NLRB of him, but I don't know what happened with it. I don't know; I went to see the Chief Counsel in Washington, who was very familiar with that case.

Mr. CRANE. You mentioned one other thing, Mrs. Mungovan, and that is the apparent connection between organized crime and the union movement on the Island of Hawaii. Is that a rather widespread perception or understanding in Hawaii that organized crime is linked up with the union movement there?

Mrs. MUNGOVAN. We have a—well, I can quote a case which is in court at the moment of an official at the Electrical Workers Union on the Big Island of Hawaii who is in court at the moment.

They have been trying to get him into court; I think it's been since 1978 or 1979, and this has been ongoing, just trying to get this guy into court. They have had charges against him, but the lawyers filed motion after motion after motion with the judge, and he has yet to stand trial.

He shows up in court, but he goes home again. He is up on charges of racketeering and various other charges over there, and he is a union official.

Mr. CRANE. Could I throw that same question out to the other witnesses here? In your own cases, is there any evidence or have you heard rumors to that effect, that organized crime is in any way involved with these kinds of union actions? I will just work down the line starting with Mr. Wohlsen.

Mr. WOHLSEN. I can't state anything that would hold up in testimony, but yes, all those rumors are rampant, and the protection of some type from the law enforcement office standpoint has been coming from some powerful political group, and it's been talked about. It's open knowledge that yes, the crime has the syndicate behind it, yes.

Mr. CRANE. Is that anything you have ever heard, Mr. Guyton?

Mr. GUYTON. No.

Mr. CRANE. Mr. Kaye?

Mr. KAYE. I couldn't swear that it was organized crime-related, but I do know for a fact that this bus that both myself and Mr. Wohlsen have encountered is, indeed, entitled a goon squad that goes around the city looking for these jobs and anyone working on them to put an end to that sort of work.

I also know for a fact that I don't know whether it's due to organized crime or not, but there is no investigation on any local level into this type of operation.

Mr. CRANE. Mr. Wohlsen, you mentioned in your testimony that the people who beat up on you and coworkers were not themselves members of the union but thus that they were apparently hired for that action.

Mr. WOHLSEN. Yes, sir.

Mr. CRANE. In the videotape that you showed earlier, some of those people are clearly identifiable. Have any of those individuals who participated in the beatings been positively identified?

Mr. **Wohlsen**. Mr. Crane, we do have the pictures of these individuals, and we are in the process of identifying those gentlemen in charges to be brought against them. I would be happy to share with you that information when it's available.

Mr. **Crane**. Very good. Do you know, Mr. Kaye, in your case?

Mr. **Kaye**. It has been my contention all along that I can identify the individuals that were involved in my beating, and at no time——

Mr. **Crane**. Do you mean you could pick them out of a line-up?

Mr. **Kaye**. Yes.

Mr.**Crane**. Do you know the names?

Mr. **Kaye**. No, I could pick them out of a line-up. I did not get any names, because there were 15 people on me at one time. The three people directly involved in my beating, I can pick out of a line-up, and it has been my contention all along to the police that I can do so. They have made absolutely no effort.

Mr. **Crane**. I don't know how closely you monitored the videotape here, but did any of the personalities that were on that videotape look familiar to you?

Mr. **Kaye**. I would really say I would have to see the tape again.

Mr. **Crane**. Again?

In your case, Mr. Guyton, the people that intimidated you, were they all union members, or were they non-union members?

Mr. **Guyton**. As far as the knife being branished, I knew that that was people who work in my plant, but I am told that the union do have people, it has nothing to do with the strike, doing a lot of their dirty work so the people in the union don't get in trouble.

Mr. **Kaye**. Could I also state something. That there were witnesses to my beating, and of the people that saw it, they said that the men involved had T-shirts on, union T-shirts on saying "Union carpenters, we bang harder."

So that's the connection to the union, but it is my understanding, and it is the understanding of the people that know of this bus in Philadelphia, that though, indeed, these men are not carpenters. They do not swing hammers. They only swing fists.

Mr. **Crane**. Let me ask just one more question before I yield to Congressman Hansen. In every instance, I will start with Mrs. Mungovan, are the police affiliated with one of the international unions in Hawaii?

Mrs. **Mungovan**. It's not PACO, but it's something, the police and something, the workers union. I don't know it it's—you see, in our state, the biggest problem in our state is that everybody is related to somebody. They're related to their politicians. They're related—It's a very localized area. A lot of people grow up in Hawaii, and they never move to another state, and you will find something interesting happened the other day.

One of the politicians who I am not going to mention his name, because I wasn't told this to be publicized, but he said to me that if it was not for the—his relatives and his friends voting for him, he would not be in office. It's not because of his beliefs of his—or anything else, and he also had a very high position which he lost because he said something against the unions out there.

I think that the most important thing is that the point of this whole thing is that the local and the state agencies don't do anything.

I have a letter here from the Prosecuting Attorney from the City of Honolulu. He is a republican. He was elected republican, and all the officials in our state are democrats. When it comes down to crime, number one, somebody is going to do something about it. He says, in this statement, that in Hawaii, a protective attitude toward crime and the criminals defendant permeates both our criminal justice system and our legislature, and the legislature is the problem, and it renders our government impotent when it comes to providing fundamental safety and security to our people.

He says, "In every legislative session since I was elected Prosecutor in 1980, we have asked the State Legislature to provide funds for our office to go after organized crime, white collar crime and public corruption. We have repeatedly lobbied for enlightened legislation which would allow prosecutors to get tough on crime and begin to offer the basic protection so richly deserved by the people of Hawaii. Unfortunately, the politicians in the State of Hawaii are more concerned about the defendant and the 'good old boys' who run things here than they are about the safety and the rights of those who want nothing more than to live and provide for their families in peace," and he said, "As written, the existing Hobbs Act is the source of continuing problems for law enforcement which translates into inaction. Often, due to politics, inhibition or confusion, law enforcement will rely on the Hobbs Act to rationalize 'looking the other way' when union officials and/or their representatives exploit the Act to engage in violence."

Mr. **Crane**. Can we have a copy of that letter? Do you have an extra copy you could leave of it for the record?

Mrs. **Mungovan**. Sure.

[The letter referred to follows:]

DEPARTMENT OF THE PROSECUTING ATTORNEY,
CITY AND COUNTY OF HONOLULU,
Honolulu, Hawaii, January 23, 1984.

Re hearing on bill H.R. 287—Sponsored by Representative Kenneth Robinson 1984.

To the Members of the House Republican Study Committee:

DEAR CONGRESSMEN: By way of introduction, I am the elected (Republican) Prosecuting Attorney for the City and County of Honolulu in Hawaii.

I have put my thoughts on paper in hopes that they may be of some value to you as you consider H.R. 287—the proposed amendment to the Hobbs Act.

In Hawaii, a protective attitude toward crime and the criminal defendant permeates both our criminal justice system and our Legislature—rendering our government impotent when it comes to providing fundamental safety and security to our people.

Unfortunately, the determined young lady who has focused your attention on the problem at hand—Cher Mungovan—is a victim of that protective attitude. Hawaii residents are angered and ashamed by what has happened to the Mungovan family.

In case you aren't familiar with the details of the Mungovan's nightmare, let me share them with you from my perspective. A Viet Nam war hero and building contractor, Walter Mungovan decided to go non-union when he set up his business on the island of Maui because his customized home-building business demanded employees who could be "jacks of all trades." When it became clear that Mungovan was firm in remaining non-union, he and his family were threatened—his automobiles were damaged—tools and equipment were stolen. Mungovan then began tape-recording conversations between himself and union agents. After the FBI said his life was in danger, he installed alarms around his home and began carrying a weapon.

Finally, when he agreed to testify against two union business agents in a perjury trial, the federal government placed him in their Witness Protection Program. What that means, of course, is that he can no longer live on Maui with his wife and family. Instead, he's living elsewhere in the United States with a new name—living like a hunted animal. And there is the possibility that he will never be able to return home.

This sad story sickens me—not only because a family has been ripped apart and sent into hiding simply because they wanted to be independent—but also because this is precisely the type of corruption the lawmakers in Hawaii continue to ignore.

In every legislative session since I was elected Prosecutor in 1980, we have asked the State Legislature to provide funds for our Office to go after organized crime, white collar crime and public corruption. We have repeatedly lobbied for enlightened legislation which would allow prosecutors to get tough on crime and begin to offer the basic protection so richly deserved by the people of Hawaii. Unfortunately, the politicans in the state of Hawaii are more concerned about the defendant and the "good old boys" who run things here than they are about the safety and rights of those who want nothing more than to live and provide for their families in peace.

As written, the existing Hobbs Act is the source of continuing problems for law enforcement which translates into inaction. Often, due to politics, inhibition or confusion, law enforcement will rely on the Hobbs Act to rationalize "looking the other way" when union officals and/or their representatives exploit the Act to engage in violence.

What we need to deal with this particular atrocity in our nation is an amended Hobbs Act. I urge all members of Congress to pass H.R. Bill 287, sponsored by Representative Kenneth Robinson.

Thank you.

CHARLES D. MARSLAND, Jr.,
Prosecuting Attorney.

Mr. **Crane**. Thank you.

Mr Wohlsen, are the police, and I gather, then, in Mr. Kaye's case, it would be the same, are they affiliated with one of the international unions in your area?

Mr. **Wohlsen**. I don't know that for a fact, sir, but I would be very interested to know.

Mr. **Walker**. They are.

Mr. **Crane**. I know, in many areas, they are. Are they with the same union, Bob?

Mr. **Walker**. I think it is one of the public employees' unions or a separate employees' union.

Mr. **Wohlsen**. I will say, they looked upon us as a group in disdain.

Mr. **Crane**. Do you know, Mr. Guyton?

Mr. **Guyton**. I don't have the slightest idea.

Mr. **Crane**. Let me yield, and I will do this on the basis of arrival for questioning. Mr. Hansen?

Mr. **Hansen**. Thank you, Mr. Chairman.

Mr. Wohlsen, you made quite a comment in your first presentation, and you deliberated very carefully between a union thug and I believe you used the words "tradesman" or "craftsman" or something such as that.

Mr. **Wohlsen**. Yes, sir.

Mr. **Hansen**. Just for my own education, would you mind giving us a definition between a union thug and a tradesman?

How would you define that, as a man who has been in a trade for many years as I have been?

Mr. **Wohlsen**. I would have to define that as one who has a certain decorum in appearance. First of all, to become a member of one of the construction trades is one that takes a lot of physical endurance and a lot of hard work on the part of the individual. That comes out in his character, his build and his hands, and a mannerism. He produces, and he doesn't destroy, sir. His clothing are different. His shoes, his hands are—has callouses on them. He has a mannerism that is identifying.

Mr. **Hansen**. To carry it a step further, if I may, you would say a union thug is not a tradesman or craftsman that didn't have the certain skills required to do a job.

Would that be correct, sir?

Mr. **Wohlsen**. Yes, sir. They are obviously identifiable by when they come on a job, and they come with fishing boxes or a tool box, that is not exactly the thing that you use to be a carpenter.

The shirts that were mentioned, their age, they are just trained young people out of order.

Mr. **Hansen**. Are you saying in effect that these people who are union thugs are not craftsmen, they are not tradesmen, then the only conclusion I can draw from your statement is that they are, in effect, hired by someone.

Mr. **Wohlsen**. Yes, sir.

Mr. **Hansen**. Hired by someone to come upon a job and do this devastation that you spoke of?

Would that be a correct statement?

Mr. **Wohlsen**. Yes, sir.

Mr. **Hansen**. This devastation here was done by union thugs and by them not in conjunction to what you were trying to do?

Mr. **Wohlsen**. Yes, sir.

Mr. **Hansen**. Who was that?

Mr. **Wohlsen**. The Building Trades Council of Philadelphia which comprises the five counties around Philadelphia and the member trades, carpenters, lumbers, bricklayers.

Mr. **Hansen**. The union thugs are hired or at that time for that purpose?

Mr. **Wohlsen**. Yes, sir.

Mr. **Hansen**. So that for a person to go out and be a plumber, carpenter or whatever. They are not hired to do the violence you were referring to; is that a correct statement?

Mr. **Wohlsen**. That is a correct statement, and it is an on-going statement. It just didn't happen this June. It happened two years ago in Doylestown.

Mr. **Hansen**. In a court of law, would you put your hand to the square and testify that?

Mr. **Wohlsen**. Yes, sir.

Mr. **Hansen**. Just for my own education, would you testify to that under oath?

Mr. **Wohlsen**. Yes, sir.

Mr. **Hansen**. The same way. You mentioned earlier in your statement you were worried about an individual who you knew as a friend. Apparently you called him, according to your statement, and you said in that statement that he had refused to testify at this hearing; is that a correct statement?

Mr. **Wohlsen**. Yes, sir. He wasn't a friend of mine.

Mr. **Hansen**. Somebody you knew, then, let me put it that way.

Mr. **Wohlsen**. I spoke to him on Monday, and he told me what happened to him as a pipeline installer, and he was afraid. He was in a community of 16,000, and I had informed him I thought it would give him credibility and they would stay away from him.

You can see, sir. You read the letter, and he wouldn't come.

Mr. **Hansen**. Were you threatened in any way to come to this particular——

Mr. **Wohlsen**. This particular hearing?

Mr. **Hansen**. This particular hearing?

Mr. **Wohlsen**. No, sir, not that I know of.

Mr. **Hansen**. Had you been threatened, would you have come?

Mr. **Wohlsen**. Identifiable to this, no, sir.

Mr. **Hansen**. Mr. Chairman, if I may just ask another question?

Mr. Kaye, you referred to the goon squads, that you walked in, they did not identify you as the owner of the property; they identified you as someone just merely as passing by; is that correct?

Mr. **Kaye**. Yes, sir.

Mr. **Hansen**. And still took it upon themselves to create this physical problem, do you know what was the reasoning for that, did you ever ascertain that?

Mr. **Kaye**. It was no more than in their way of destroying my property. My question to them upon walking to the entrance of the property was, "What are you doing, destroying someone's private property?

Mr. **Hansen**. And that was offensive to them, apparently.

Mr. KAYE. That was offensive to them. They pushed me outside, all converged on me and began striking me.

Mr. HANSEN. Later on in your earlier testimony, you stated that this same group was willing to come free, union people, was that correct, and put this back as it was in its original state?

Mr. KAYE. Yes, because my contractor, after I told him of what happened to me, my contractor contacted the business agent for the local, which he had made a deal with to hire a union employee, and said that you have just beat up the owner, which they didn't know, and that in restitution for beating up the owner, that they would supply a worker for three weeks to make up for the damages.

Mr. HANSEN. I think what I am leading up to, my point here, is that was an admission, right, they admitted they beat up the owner?

Mr. KAYE. Yes.

Mr. HANSEN. And they are now going to come in and make restitution of that?

Mr. KAYE. Correct.

Mr. HANSEN. Did you use that testimony, that witness, when you then went to the local law enforecment agency and said, "Here is an absolute admission?" Was that used at all when you tried to get some help?

Mr. KAYE. It was used, yes, but nothing—it wasn't followed up. It wasn't pursued.

I would also like to add something to your question of Mr. Wohlsen about this goon squad. These are paid people, they are paid approximately $40 a day to ride around in this bus and threaten individuals——-

Mr. HANSEN. How do you know that?

Mr. KAYE. To walk after your job.

Mr. HANSEN. May I ask very politely, how do you know that?

Mr. KAYE. I know that because my contractor has a friend who used to ride on that bus.

Mr. HANSEN. Mr. Chairman, do I have time for just one quick additional question?

Mr. CRANE. Sure.

Mr. HANSEN. Mr. Guyton, you said in your testimony, and I am curious. If I may, you said this, "If I did not have a family, I would deal with it differently."

What were you referring to, and what would you do differently than what you were doing?

Mr. GUYTON. If I did not have a family, I might not be here, I might not try to do something about it, I might have just stayed out the picket line, even though I didn't think it was right that I couldn't vote.

In other words, I can do without, say, the money; I can make it one way or another, because I just have me to worry about.

Mr. HANSEN. If I may say this, you were in effect saying that, if I didn't have a family, I wouldn't have worked to get the money that you referred to to get the groceries?

Mr. GUYTON. Not that I have to, just I have no responsibilities but my own.

Mr. HANSEN. But you would have been inclined to become part of the picket line and that type of thing; is that correct?

Mr. GUYTON. I may not have been out there.

Mr. HANSEN. I am sorry. I was probably reading something into it.

Mr. GUYTON. I am sorry.

Mr. HANSEN. I was reading something into it that you would have done violence.

Mr. GUYTON. If it wasn't for the fact that I didn't have a family, I still wouldn't have honored the picket line, I wouldn't have went out there with them, but not went to work rather, because I wouldn't had dependents. I can make it by myself. I could have found a job out in the field or anything just to keep cigarette money in my pocket if that is what it came down to.

Mr. HANSEN. Thank you, Mr. Chairman.

Mr. CRANE. Surely.

Mr. WALKER. Thank you, Mr. Chairman.

I think it is well to point out since Mr. Wohlsen is a constituent of mine, that this is an on-going problem in our area. We just recently had an incident where that same bus—I don't know if it is the same bus—but where union goons showed up at a small contractor's in Lancaster County and busted out the headlights on vehicles that were in his possession as they left the property; did damage to some of the trucks and so on of workers leaving that property, so that this is an on-going kind of problem; it is not something that just crops up incidentally.

It is obvious that it is a group that feels very strongly that they can get away with this because they continue to do it, and it is most disturbing.

It seems to me the testimony that we have heard here today is proof positive that there are greedy special interests in this country who do not hesitate to prey upon private citizens, to prey upon individuals for those things which they want, and what is most disturbing about the testimony that we have heard here today is the fact that it is easier actions of this Congress or inaction by this Congress that allows this kind of thing to go on.

I think that we need to put it all into perspective. A few months ago, I was doing fairly extensive investigations of what goes on in outlaw motorcycle gangs in this country. One of the things they came across in the course of those investigations was the fact that some of the people who are hired as the goons are, in fact, members of these outlaw motorcycle gangs, who law enforcement officials will describe to you as pathological killers.

This is the kind of tie-in that we are seeing more and more, and we, in Congress, by what we refuse to do or, in some cases, what we actively do to protect such greedy special interests are, in fact, contributing to the problem. And you know I really think that what we heard here today gives us every obligation to go to the Floor of this Congress and begin to call into question the practices of this place which allow this kind of thing to continue.

Mr. Wohlsen. Thank you.

Mr. Crane. Mr. Nielson?

Mr. Nielson. Unfortunately, I only heard Cher Mungovan's testimony. But let me ask you, when you were surprised to learn that the Federal Government could do nothing to help you? Did that surprise you?

Mrs. Mungovan. We were really shocked. Things that shocked us is that there is a law that exists that allows only these people to get away with this kind of thing. I mean, if an employer does this, they go to jail; if an employer beats up somebody on a picket line.

See, in our State—and I know our State's different in some ways from a lot of other States—the people who are doing this with the Carpenter's Union, for the most part, were carpenters at one time. The union officials, the people that run the unions, pick out certain violent people with violent tendencies and put them in the positions of business agents who do nothing. They get paid, in our State, $44,000 a year to go around and intimidate and harrass and threaten people to get them to sign a contract.

See, in the State of Hawaii, Hawaii is like the last foothold of unions in the United States, and in the last few years, they have seen them losing that foothold, and they vowed to get back what they had, so we are going to have a lot more trouble in our State than we have had in prior years. It is not just with the Carpenter's Union.

Mr. Nielson. Did it surprise you that the congressional delegation did not support your case? Did it surprise you they were locked into these views?

Mrs. Mungovan. Not really, because I know who contributes to their campaigns, but I was a little upset when I went to see Senator Inouye, because Senator Inouye, I think had he realized that I was the Mungovan he reads about in the papers everyday, I don't think he would have granted me an appointment, and I was discussing with him the Federal law and the Federal court cases and the Federal Witness Program.

He suggested that I go home and talk to my mayor.

Mr. Nielson. If something is done, as apparently was in this case, to cross the picket line and so on, in the case of Mr. Guyton, would you expect the State and local government to do something for you?

Mrs. Mungovan. No. We have a police chief who has been extremely helpful since the FBI got in touch with him and asked for protection for us since the picketing and so on, but his problem is that half of his department upholds the law half the time and the other half does it when they feel like it.

Although he is in charge of his department he doesn't have control over their individual actions.

We have asked that some of these officers be brought in front of the Police Commission. The officer that arrested Walter on that case, I mean, that was—the Police Department, the Police Chief was upset about that at the time, because he knew that the circumstance under which they filed the terroristic threatening complaint were false. So that police officer was asked to resign. But the other police officers who were on the picket lines and dealing with the picketers and telling the picketers not to talk to Walter and so on and so on, have not been reprimanded.

Mr. Nielson. Let me ask the same question to Mr. Guyton.

Would you expect the local and State people to help you when you wouldn't cross the picket line out there?

Mr. Guyton. No.

Mr. Nielson. Did you ask them to?

Mr. GUYTON. With them having banished me with the knife and called them, that showed right there they wouldn't do anything.

Mr. NIELSON. Did they see that?

Mr. GUYTON. Did they see him with the knife?

Mr. NIELSON. Yes.

Mr. GUYTON. No, but I had a witness that did that did tell them he had a knife, and when I asked if they had searched him, they said, "No, it is against his rights to search his pockets."

Mr. NIELSON. If the State and local government wouldn't handle it, would you expect the Federal Government to step in?

Mr. GUYTON. I would expect, but I don't know if it would take place.

Mr. NIELSON. Let me ask Mr. Kaye the same question.

Did the State and local people help you in your situation?

Did you bring it to their attention? What was their reaction?

Mr. KAYE. I brought it to their attention. They went as far as—I supplied them with the license number of the bus, and they took the investigation as far as identifying that license plate to the ownership of the carpenter's union, and at that point, more or less, the investigation stopped. They said that they would give us protection on the job, but since the day of the beating, I have not seen any police anywhere near the job.

Mr. NIELSON. Have you, either you or Mr. Wohlsen, have you sued or tried to sue those who did the injuries? Have either of you tried to sue them?

Mr. KAYE. At this time we are trying to get some kind of criminal action against them, but no, there is no civil case pending at this time.

Mr. NIELSON. What about you?

Mr. WOHLSEN. Yes, sir. I am in the process of a personal injury suit, one of about nine more suits that will be followed through on, and I think it is interesting to note that the lawyer that I was referred to who is a personal lawyer said, "Oh, God, I don't want your case."

He said, "You cannot get any money out of the union." That is what he said.

Mr. NIELSON. If the local and State authorities don't help you, apparently they haven't in your case, what do you think the Federal Government should do? What should we do?

Mr. WOHLSEN. I think you should put your law enforcement agencies on the job of cleaning out and weeding out these obvious thug gangs that are in operation, and whether that be through the FBI and all the other law enforcement agencies that may be of more sophisticated nature than the local Pennsylvania State Police or Delaware County Police Department, which is really the one we have to turn to. They are rather limited.

Mr. CRANE. May I interrupt just a second, because Mr. Kaye has to depart in less than five minutes, and if either of you have questions you would like to direct to Mr. Kaye before he departs, do so at this time.

Mr. DANNEMEYER. Thank you, Mr. Chairman.

I am very appalled by what I have heard here by the testimony of these witnesses. It is a sad thing to hear. I would hope that out of this hearing, certain action will take place on the part of our committee.

First off, I think we should make a condensation of the testimony that has been forthcoming and write to the U.S. Attorney, who has jurisdiction of the areas in which these witnesses testified, and ask that U.S. Attorney to put in writing their response to what they intend to do, if anything.

I think that is the minimum thing we should do with the U.S. Attorneys.

Secondly, I think we should write to the Bar Association, the organized Bar of the areas in which these people work, and bring to their attention the dilemma that Mr. Wohlsen has just alluded to.

Can you get a private lawyer to file a lawsuit against these defendants? The answer is, it is difficult, because the lawyer doesn't want to put, in some cases, himself into what he sees your shoes to be. But the Bar has, I think, a responsibility to pursue justice. The actions that you people have experienced give rise to two causes of action:

One, for criminal prosecution by public authorities paid for at taxpayer's expense to address the law and seek grievances on behalf of the people of the United States or the people of the State of Pennsylvania, what have you. That is the responsibility of a criminal District Attorney or a U.S. Attorney. That person usually has discretion with whether or not they want to file.

But you also have a cause of action when you are aggrieved in our society of a civil cause of action for damages. You have related a conspiracy theory, and when you get this case to trial, I am convinced that a jury that is this interested was going to award you a substantial sum of punitive damages against the party.

The difficulty is finding a lawyer with the courage to take the case. That is the difficulty, and that is why I suggest, Mr. Chairman, we write to the Bar Association of the States involved and lay this out to them and challenge them on behalf of the organized bar of their State to have the guts to stand aside any personal involvement that any of the members may have, but to furnish you folks with a lawyer to act on behalf of the Bar Association.

I think those two actions we should certainly take, and then also, I, as a Californian, I hesitate to say this, because we have a beautiful State in California, and I have been to Hawaii, but I think if we can find somebody to pay the transportation expense, and I am just not trying to promote us a trip to Hawaii, my friends, but I think we should go to Hawaii and hold a public hearing and invite those witnesses.

Mrs. Mungovan, am I pronouncing that right?

Mrs. **Mungovan**. I am the only one that is going to show up. Everybody is too scared to. [Laughter.]

Mr. **Crane**. Will you yield?

Mr. **Dannemeyer**. You can run, but you cannot hide.

Mr. **Crane**. Will you yield for a point?

Mrs. Mungovan mentioned that many fellow employers from Hawaii in fear have departed to California. Do you think some of these people that were in the construction business or a comparable business to your husband's work, do you think in California, if the hearing were held there, that they would appear?

Mrs. **Mungovan**. No, it is not that. They wouldn't even come into court. They wouldn't even come into court, because they would have to, because the union would see them there. They wouldn't even talk to the FBI. Some of them did talk on the phone.

Mr. **Dannemeyer**. What I am talking about is I think we should invite public officials charged with the responsibility of enforcing the law in that State of the Union to come in to a public hearing and give a response as to the conduct of our stewardship in a public forum.

That is what I am talking about. And maybe that will snub their noses at us and refuse to appear, but, you know, you can run, but you cannot hide.

I think if we just put the light of day on this, we can shame them into coming in and explaining their conduct. The State's Attorney in Hawaii, sure, the U.S. Attorney may have an impediment with respect to as not being able to get at these people, but a battery is a battery, and a threat to the denial of civil rights, that State's Attorney should have some responsibility, as well.

I just cannot believe that they are helpless if you put enough pressure on them.

Mrs. **Mungovan**. The State's Attorney in the State of Hawaii doesn't do that. They are put in by the Governor, and our Governor has already made his views known. They are not elected officials. The U.S. Attorney in the State of Hawaii has been very helpful, and if he had the law on his side, he would prosecute them in a second.

I have no complaint about the U.S. Attorney's Office or the FBI or any of the Federal agencies except the NLRB. I think the NLRB has a lot of answers to come up with, not just in Hawaii, but all over the United States. There is a lot of questions within that office that should be asked.

But I have no complaints about the U.S. Attorney's Office. If they had a Federal law on their side, they would prosecute in a second.

Mr. **Dannemeyer**. I want to personally express my thanks to these witnesses for having the courage to come here and testify in this open hearing and the courage to standup and say, "It is not right, and we want to seek a redress of grievances."

It is that kind of grit of which this country is made, and we will continue to provide the substance which makes Americans a free people, and I want to express my personal thanks to you.

Thank you.

Mrs. **Wohlsen**. Thank you.

Mr. **Crane**. Do you have any further questions, Congressman Nielson?

Mr. **Nielson**. No. I concur with Congressman Dannemeyer, who always does very well in conveying his message. I, too, commend you for coming and opening these things up. We need to do this, some work on this Hobbs Act. Some of these bills may help somewhat. I am not sure we can get them to the Floor, however. We have the same problem you had with the delegation of Hawaii also obtains on the House Floor to some extent, and I am not sure we can get there, but you think we should try; at least bring it to people's attention, and I thank you for coming.

Mr. **Wohlsen**. Thank you.

Mr. **Crane**. I would just like to summarize by saying that Mr. Guyton really got through to me talking about his wife and children, and I am sure it applies to all of you, because you are all in the same circuit.

I have eight children, and when you were talking about the fears that you have experienced as a result of those threats and the kind of intimidation you have all been through, all of a sudden, it struck home, and when Mrs. Mungovan described the size of her husband, a Vietnam veteran, 6'7" tall, carrying a Magnum just out of fear for his own life and coming home and worrying about who is apt to throw a fire bomb through your window. I was in a Presidential campaign back in 1978 to 1980, and, frankly, we got some threats through the mail.

We got some via telephone calls, and it had never troubled me before until I realized that in that instance, it was mostly just crazy people, but a crazy person might do that, and when finally, I was given secret service protection for my home, that was my paramount concern.

In your case, you don't have that kind of protection. But I can relate to it because yours is a more cunning kind of enemy than I had to deal with. In my case, it was just a kook or kooks, but I want to reiterate what Congressman Dannemeyer said. You know, the Marines have that slogan, "A few good men." In this case, a few good men and women who can have the courage to stand up and be counted can make a difference.

Your testimony, I guarantee you, will not stop with this morning's hearing, and we will follow up on Congressman Dannemeyer's but in addition to that, we are equipped with more ammunition to address this problem in the House of Representatives where, unfortunately, we have had tougher sledding in terms of trying to get legislation moved than they have had in the Senate.

Senator Grassley at least has got it favorably reported out of his subcommittee. It clearly is an area of legitimate Federal jurisdiction, because these unions do cross State borders, and normally, I would harbor a great respect for local law enforcement, but you are dealing with entities here that are not just national—they are international, and as a result, that is a legitimate basis for getting the national law enforcement authorities to go to work in your behalf, especially in areas where local law enforcement authorities have broken down.

I want to thank you all for being here. We are really in your debt, and your injury today is potentially any American's injury tomorrow.

To try and cut off these appalling figures that you can see quantified numerically in these charts, and as I say, this is just evidence that has been dug out by the National Right to Work Legal Foundation in a Wharton study, but you are talking of thousands, thousands of acts of violence, and that probably represents just a small fraction of the total.

This is, to me, a very serious national problem. You are all to be commended for being here.

Thank you, so much, and with that, we will terminate this morning's hearings. Thank you.

Mr. **Wohlsen**. Thank you.

Mr. **Guyton**. Thank you.

[Whereupon, at 11:39 a.m., the committee recessed, to reconvene at the call of the Chair.]

[The following article was subsequently supplied for the record:]

[From the Washington Times, Feb. 9, 1984]

UNION VIOLENCE, FEAR DISCOURAGE WITNESSES

[By Dwight Cunningham]

Robert Wohlsen Sr., prominent Pennsylvania contractor, said he had expected to be joined by another victim of labor violence at yesterday's House hearing.

But at the 11th hour the potential witness told a congressman he wouldn't appear because he feared his home, firebombed once before, would be hit again.

"I talked to him on Monday and offered encouragement. I knew the man was afraid," said Mr. Wohlsen, of Lancaster, Pa.

Rep. Philip Crane, R-Ill., said two other business people who wanted to testify on legislation to restore federal jurisdiction over extortionate union violence also pulled out at the last moment after being threatened.

Mr. Wohlsen, however, offered visual and verbal evidence that union militants often attempt to settle conflicts with management through brutal beatings, destruction of property and other acts of intimidation.

He videotaped the curses and taunts from union activists at one of his non-union *construction sites last* summer and showed it at yesterday's House Republican Study Committee hearing.

Not on the tape, however, was what followed: a brutal physical attack which caused him to require two brain operations to remove a blood clot.

Mr. Wohlsen also brought along a helmet, explaining in an emotional voice that his doctor requires him to wear it whenever he plays squash.

"The people that confronted us that June 8th were not tradesmen—they were thugs," the contractor said at the hearing, which was held under tight security.

Mr. Wohlsen recalled a gray bus that was used to transport the militants to the job site. Two weeks ago, he said, "That same bus transported men to a Delaware welding company's picket line."

There, he said, they broke automobile windshields and intimidated workers. "There were shots fired," he added.

Other witnesses, such as Philadelphia investor Sigmund Kaye, recounted similarly violent experiences and said law enforcement officials were unresponsive.

Just released from a hospital and still partially paralyzed, Mr. Kaye, wearing a neck brace, said he was warned last year by a carpenters union "goon squad" not to use nonunion employees to renovate a house.

He testified he was punched and kicked several times by persons wearing T-shirts with the slogan, "Union Carpenters Hit Harder."

Mr. Kaye said the license plate on the men's bus was reported to police. A police check confirmed that the bus belonged to a local carpenters union. But, he said, the Philadelphia police department, city district attorney and the U.S. Attorney's Office all balked at continuing the investigation or seeking any indictments.

"The FBI won't get involved because it's not a federal crime," he sobbed, "I'm an American citizen. I do not believe they should get away with this."

Victims such as Mr. Wohlsen and Mr. Kaye fall through a loophole in the Hobbs Act, which the U.S. Supreme Court in 1973 determined rules out prosecution under federal extortion statutes for violence or threats of violence "for legitimate union objectives."

In contrast, unions have long enjoyed federal protection under the Wagner Act, which guarantees workers' rights to bargain collectively.

The Hobbs Act anti-violence legislation has been approved by the Senate Separation of Powers subcommittee and is awaiting approval by the Senate Judiciary Committee. Companion legislation is pending in the House Judiciary Committee.

According to statistics culled from newspaper accounts and police reports, Mr. Crane said, five unions were most frequently involved in violent incidents between 1975 and 1981: Teamsters (384 incidents); United Mine Workers of America (204); United Steelworkers of America (130); United Auto Workers of America (128); and the American Federation of State, County and Municipal Employees (116).

The construction industry, he said, "has seen more than its fair share" of labor-management violence.

SENATE JUDICIARY COMMITTEE RESUMES

Senator **Grassley**. I call the hearing back to order and for those of you who just got here, we have had part of the hearing and then I recessed for 15 minutes. And now we will resume that.

And our witness now is Mr. Floyd Clarke. He is Deputy Assistant Director of the Criminal Investigation Division of the Federal Bureau of Investigation. He is here to tell us of some specific instances in which the investigation or prosecution of organized crime figures were declined based on the *Enmons* loophole in the Hobbs Act.

Mr. Clarke, thank you for being patient. I know that your work goes on whether you have to wait for Senators or not, but I appreciate you giving me that extra 15 minutes.

Mr. **Clarke**. Thank you, Senator.

Senator **Grassley**. Proceed.

STATEMENT OF FLOYD I. CLARKE, DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION.

Mr. CLARKE. Mr. Chairman, I am here today, as you requested, to testify about the effect of the *Enmons* decision on the FBI's investigations of union violence. It is a pleasure for me to do so.

The FBI has the responsibility of investigating violations of several Federal statutes, including the Employee Retirement Income Security Act, the Labor-Management Relations Act, the Labor-Management Reporting and Disclosure Act, the Racketeer Influenced and Corrupt Organizations statute, and the Hobbs Act.

Our investigations focused on corruption within the American labor movement have disclosed that there are those who illegally use the unions for their personal benefit. They embezzle money from the unions or their trust funds, provide a favorable competitive edge to companies in which they have a hidden or open financial interest, and extort legitimate businessmen and union members.

It is a sad, perhaps tragic, fact that many of these corrupt individuals are so ingrained within labor unions that honest, hard working rank and file members have little hope of removing them through the free election process.

Union members also may be intimidated from fighting the corruption affecting their union. Businessmen, too, often realize that to get along one has to go along or else. The scope of the corruption problem is such that the FBI has identified labor racketeering as one of our investigative priorities. We are encouraged by the attention this and other committees of the Congress have shown and are displaying in addressing what can only be labelled as a pressing and serious issue.

Our efforts have produced results. For instance, Roy Williams, general president of the International Brotherhood of Teamsters; Allen Dorfman, an insurance executive; Joseph Lombardo, a Chicago organized crime figure; and two officers of the Teamsters' Central States, Southeast and Southwest Areas Pension Funds were convicted on December 15, 1982 for violation of 11 counts charging conspiracy to bribe a U.S. Senator, interstate travel in furtherance of bribery, and wire fraud.

On April 5, 1984, Sherman Fricks and Harold Grubbs, Local 211, United Association, Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, Houston, Texas, were convicted of conspiracy and acceptance of solicitation of a fee to influence the operation of union employee benefit plan. Their conviction resulted from the FBI's BRILAB undercover operation.

On April 4, 1982, Charles F. Collins, former executive director of the Michigan Conference of Teamsters Welfare Fund, was convicted of making false declarations to a Federal grand jury. This investigation led to an ongoing, joint investigation involving the FBI, Internal Revenue Service, and the Department of Labor concerning allegations of a conspiracy in the payment and receipt of illegal payments or kickbacks in connection with the placement of dental, optical, and medical benefit plans with the Teamsters' Welfare Fund.

On April 5, 1984, Joseph Sherman, president, John Roshetski, secretary-treasurer, and Stephen McNair, business agent, local 95, Laborers' International Union of North America, AFL-CIO, New York, NY, were indicted for two counts in violation of the Hobbs Act. The indictment charges that some of these individuals accepted a $3000 partial extortion payment. They initially demanded a $20,000 payment to ensure labor peace.

On February 7, 1984, Maurice Schurr, president, local 929, International Brotherhood of Teamsters, Philadelphia, PA, and 13th international vice president of the Teamsters, along with four other current and past officers of Teamsters Local 929, were indicted by a Federal grand jury for 26 counts of Taft-Hartley Act violations and conspiracy.

While there are several statutory tools available to us, only the Hobbs Act proscribes a local act of extortionate violence. As a result of the *Enmons* decision, our investigations of extortionate violence are limited when the acts occur acts occur in the labor-management context. Permit me to illustrate.

In 1981, a North Carolina construction company working near Albelmarle, NC, was laying 10 miles of natural gas pipeline using nonunion labor. The job site was being picketed by a local union of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO.

Subsequent pressure testing of the pipeline revealed that 15 small holes had been drilled into sections of the pipeline. The construction company suffered about $15,000 to $20,000 in damage to its equipment from sabotage and was forced to pay approximately $50,000 in overtime and salary to repair the pipeline.

We immediately presented this information to the United States Attorney, as is our policy with such violations. The U.S. attorney's office declined prosecution because of the *Enmons* decision. Local authorities were unsuccessful in identifying the saboteurs.

During June 1983, a construction company began construction of an office building complex in Ohio. The construction firm adhered to a best bid-low bid policy, which resulted in the hiring of both union and nonunion contractors. Based upon its bid system, the construction company hired a nonunion firm to install plumbing at the construction site.

After telephone threats by anonymous callers who suggested that the house of the vice president of the plumbing company would be blown up if the company started the job, the plumbing company cancelled its contract with the construction company.

Again, based upon the bidding system, the construction firm hired a second nonunion plumbing company to install plumbing at the construction site. After withdrawal of the first plumbing company, but prior to the hiring of the second plumbing company, the construction firm received a telephone call from the secretary-treasurer of a local union associated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO.

This individual asked if the construction company needed plumbers for its construction site. Pursuant to a Federal court order, the business telephone of the second plumbing company had a tracing device installed and with the cooperation of the plumbing company owner, a tape recorder was also installed.

On the day before the plumbing company was to begin work, the owner of the firm received four telephone calls. One of the calls threatened the owner's life if he began construction. These four telephone calls were traced to the residence of the secretary-treasurer of the local union.

The U.S. attorney's office determined that Federal prosecution in this matter could not be initiated because of the *Enmons* decision. This case was then referred to a county prosecutor and a one count indictment was returned against the union official, charging him with extortion. Trial of the individual is pending.

A local union of the Hotel Employees and Restaurant Employees International Union is located in Philadelphia, PA and southern New Jersey. This local union has been identified as being corrupted by organized crime. It was alleged that on two occasions the vice president of the local union has hired persons to vandalize businesses.

One was a restaurant at which the local was attempting to organize the employees. Cars parked in the restaurant lot were vandalized. Windshields were smashed and tires slashed.

The other was a hotel at which it is believed a conflict arose following a management decision to fire an employee. Someone poured concrete into public toilets. FBI investigations of these incidents were forestalled by an existing policy statement from the U.S. attorney's office citing the *Enmons* decision.

Other examples exist as well. Last year we conducted a survey of our field offices. They reported several cases in which *Enmons* precluded FBI investigation or Federal prosecution.

Mr. Chairman, you also asked for comments about S. 462. The FBI's role in investigating labor violence ought to be enhanced. Accordingly, we support measures such as S. 462, which would strengthen our hand.

Section (d) of the bill, excluding as it does the scope of title 18 minor or incidental acts, is a particularly attractive feature, since it would focus Federal energies and resources on more serious acts of violence. I am advised that the Department of Justice proposes an amendment to the bill which would establish as a bar to prosecution rather than as an affirmative defense the fact that incidental picket line violence occuring during an otherwise peaceful labor dispute, provided such violence was of a minor nature and was not intended to obtain property.

From time to time, routine acts of sporadic violence occur during a labor dispute when emotions are high. Such acts, not designed for extortive purposes, should be addressed by State and local authorities. In our view, remedial legislation should make clear that the use of extortionate violence for coercive purposes by those representing management as well as those representing labor is prohibited.

Corrupted businesses negotiating with labor unions should not have the right to extort rank and file members and use the unions for their personal benefit.

Mr. Chairman, the FBI has no desire to interfere with the right of labor and management to pursue legitimate goals. We do desire to bring to justice those who resort to violence and other criminal acts to pursue their illegitimate goals, and we pledge ourselves to work with you to that end.

Senator GRASSLEY. Well, thank you for your testimony, and you very clearly laid out specific examples of where you have been able to prosecute and where you have not been able to so do. And that speaks to the need of the bill as well as the specific examples of violence that have been brought up so far during these many days of hearings.

You did point out something that we were not aware of and that is the proposal where you would like to amend an aspect of this bill. That has not been previously communicated with me and that is all right. But I am certainly willing to state at this time that regardless of that, we are willing to discuss that amendment or any other proposed amendments you might have to the legislation.

Mr. CLARKE. I apologize for the fact that there was not prior notice, Mr. Chairman. It is my understanding that that is the department's position, not the FBI's, but the FBI does concur with the department's position on that, being a bar as opposed to an affirmative defense.

Senator GRASSLEY. Well, no apologies necessary. I just wanted to state that I did not know that and I wanted to take the opportunity to express my willingness to sit down with anybody who has any complaints, any people who have complaints about the bill and its workability, as opposed to those who might disagree philosophically with what we are trying to accomplish.

ORGANIZED CRIME

I guess my first question, I would like to have just a general statement from you on whether or not organized crime is a serious problem in the United States today.

Mr. CLARKE. We believe organized crime has been and continues to be a serious problem from several standpoints: their ability to use force and violence and intimidation to obtain a favorable edge in an otherwise competitive marketplace; and to use otherwise legitimate businesses for illegitimate gains and personal profits.

Senator GRASSLEY. Is organized crime just as powerful today or if not more powerful than ever before?

Mr. CLARKE. We would say that organized crime is as powerful today as it has ever been. We have in the last few years achieved some of our most significant results against the upper echelons of organized crime. We are not willing to rest upon those accomplishments. We see that the organized crime element has those waiting in the wings ready to replace the upper echelon who have been convicted, and we have evidence of those who are continuing to exert their influence and power even though they are incarcerated.

Senator GRASSLEY. Is a major source of that tremendous power by organized crime enhanced by its ability to work through legal and legitimate organizations or even through public officials and through labor organizations?

Mr. CLARKE. Yes. We believe that organized crime has exerted control and influence over four major labor unions. We also have evidence of them using otherwise legitimate businesses for their power and economic clout in all segments of the American society.

Senator GRASSLEY. Is that basically how they flex their muscle in the 1970's and 1980's compared to the intimidation they used in accomplishing their goals through murders and bombings and violence that we think of during the 1930's?

Mr. CLARKE. Yes. Infiltration and manipulation of labor unions has been one of the many corrupt practices of traditional organized crime in this country and experience has shown that the control of the labor unions, corrupt public officials, and control of legitimate businesses provides the traditional organized crime groups with extreme power in the industrial world, as well as large amounts of money with which they carry on a myriad of other illegal activities.

However, organized crime figures continue to use force and violence which includes gangland type slayings to attain their criminal goals.

Senator GRASSLEY. You alluded to the association of organized crime and labor unions. I want to ask more specifically, are some legitimate labor organizations influenced or controlled by organized crime?

Mr. CLARKE. Our investigations have determined that organized crime does exert influence and/or control over four major labor unions. Although there are other individual unions that are corrupted by organized crime located within the various regions of the United States, four international unions have been designated by the FBI as being substantially influenced and/or controlled by organized crime.

And these four unions are the International Longshoremens Association, the Hotel Employees and Restaurant Employees International Union, the Laborers International Union of North America, and the International Brotherhood of Teamsters.

Senator GRASSLEY. I would like to add from another department's report something that would speak to that same question. And from the record of the Department of Labor's Inspector General, and that would be from his 1981 semi-annual report: stated that over 400 labor organizations are associated, influenced or controlled by organized crime.

Next, is extortion—and I specifically mean the coerced payment of money or surrender of other property out of fear of physical injury, death, or serious property damage, a frequent activity of organized crime?

Mr. CLARKE. Yes. This has been a problem that's been with us since the mid-1800's when officers of the Building Trades Unions first started selling strike insurance. This problem continues today. And although organized crime continues to become more sophisticated in the methods used to influence or control the labor unions and legitimate businesses, they continue to use threats and actual physical violence to attain their goals.

Senator GRASSLEY. Do organized crime figures sometimes extort employers or other persons through the use of legal and legitimate organizations?

Mr. CLARKE. Yes. We have shown that organized crime will extort not only the employees but the employers or anyone else to facilitate the improvement of their particular financial position or their personal desires or businesses.

Senator GRASSLEY. Do organized figures sometimes extort employers in the labor unions in which they influence or control?

Mr. CLARKE. Yes; investigations of the four unions which I previously mentioned have demonstrated that organized crime figures routinely extort employers or companies whose employees are represented by these unions. And the result has been significant influence over certain industries and employers succumb to this extortion in order that they may survive. Some of these industries are the trucking industry, cartage and shipping industries are also some of the examples where that is evidenced.

Senator GRASSLEY. And does this extortion sometimes take the form of demand for the payment of money or other properties to the union and its members rather than directly to the union leader?

Mr. CLARKE. The increased demands for the employer to pay money to the union or to its associated funds provides the organized crime figure with an increased power or financial base, which can be used by the organized crime figures who might have access to those union funds through embezzlement or what would otherwise be legitimate loans obtained; but, they have the intent that those loans will never be repaid. And they provide jobs to organized crime figures despite the fact that they do not work for pay. This is what is sometimes referred to as "no shows."

Senator GRASSLEY. In these cases, is the money or the property or some portion of it later transferred to the personal use of union leaders?

Mr. CLARKE. Yes; our investigations have determined that corrupt union officials do find some method whereby they can use money or property that has been obtained through extortion of the employers for their own personal use and benefit. An example would be that a union official can demand that an employer provide payments to a health or welfare fund which will benefit the union membership. In return for making these payments, the employer is guaranteed union peace. The union official that has access to the funds can borrow money from the fund, which may never be repaid.

Additionally, the official can negotiate contracts with various medical or dental clinics or insurance providers to provide these services for the union membership. And, in granting these contracts, they can demand a kickback from the owners of the medical and dental clinics. In this manner, the union official, both directly and indirectly, personally benefits from the initial extortion.

Senator GRASSLEY. Would it be fair to characterize this payment to the union as a cover of a payment to the organized crime figure acting as the union leader making threats?

Mr. CLARKE. I am not sure that I would go quite that far because that implies that the employer may have knowledge of the illegal use of the payment to the union by the union official. Quite often the employer is not extorted for an illegal payoff because the union official fears the businessman is legitimate and will report the unlawful demands. In many instances, the union official extorts the employer for alleged legitimate union demands and then through some of the previously described methods uses these payments for his own personal benefit.

ENORMOUS LOOPHOLE HELPED ORGANIZED CRIME

Senator **Grassley**. Did the Supreme Court in the *Enmons* case rule that the Hobbs Act barred the prosecution of a union or a union officer or member for extortion if the ultimate objective of the person using the violence was a legitimate union objective?

Mr. **Clarke**. We believe so. Both the FBI and the Department of Justice interpret the *Enmons* decision as a prohibition against using the Hobbs Act to prosecute union officials or members for extortion when the activity is done for the ultimate objective of the union official or members attaining legitimate union objectives.

The *Enmons* decision also enables individuals to argue that their actions and often excessive demands are legitimate labor goals. This decision can also assist the labor racketeer in that he can place excessive demands on apparently legitimate businessmen and use violence to achieve these demands. If the businessman, in an effort to save his business, capitulates to these demands and seeks to bring about union peace through payoffs to the union racketeer, it is then the businessman who is in violation of the Taft-Hartley Act.

The labor racketeer knows that by accepting the illegal payoff from the businessman, the businessman has violated the law and must remain mute on the overall conspiracy.

Senator **Grassley**. Does this decision, the *Enmons* ruling already referred to, act to obstruct or impede the prosecution of organized crime figures in labor organizations which they influence or control?

Mr. **Clarke**. We believe so. The *Enmons* decision does adversely impact on the successful prosecution of these organized crime and labor racketeering figures.

First, the decision has deprived the Federal Government of the ability to punish significant acts of extortion and violence when they occur in a labor-management context. Although there are other Federal statutes that proscribe the use of specific devices or the use of channels of commerce in the underlying act of extortionate violence. Only the Hobbs Act proscribes a localized act of extortionate violence whose economic effect is to disrupt the channels of commerce.

Additionally, the *Enmons* decision forces both the FBI and the prosecutors to consider fine questions of whether the labor goals, sought by those persons making the extortionate demands, are otherwise legitimate goals of the labor movement.

And, finally, parties to labor-management disputes are afforded an exemption from the statute's broad proscription against violence, which is not available to any other group in our society.

Senator **Grassley**. Would it be fair to say that the *Enmons* loophole of the Hobbs Act helps organized crime figures retain their control of the legitimate labor organization by being able to better secure benefits for the union member?

Mr. **Clarke**. Yes; as a result of their ability to get better pay and benefits from an employer by the use of these extortionate methods, organized crime figures in leadership positions in labor organizations have been able to maintain those positions. However, the influence and control of labor unions by organized crime is such that even without rendering significant benefits to the membership, these positions would be relatively secure due to the fact that even the membership would be fearful of threats or acts of violence should they oppose the union leadership.

Senator **Grassley**. Would it be fair to characterize some of the legitimate union objectives that are the purported purpose of the use of violence, force, and fear directed by organized crime figures in any way in any of these labor organizations as a cover for illegal purposes?

Mr. **Clarke**. We believe that the *Enmons* loophole in the Hobbs Act has helped organized crime figures retain their control of the legitimate labor organizations and they are better able to secure benefits for the union membership in that regard.

Senator **Grassley**. And does this cover act to prevent or impede the successful investigation and prosecution of organized crime figures?

Mr. **Clarke**. We believe that, in fact, it does and that it has a significant adverse impact on our investigative efforts.

Senator **Grassley**. Would it be fair to say that the *Enmons* loophole of the Hobbs Act provides an incentive for an organized crime figure to penetrate a labor union in order that he might practice extortionate acts under a legitimate cover?

Mr. **Clarke**. I do not know that we would characterize it as an incentive, but rather it allows the organized crime figure the protection under the law or the loophole. They are well aware that that decision exists and, as opposed to it being an incentive, I think it provides them the necessary protection.

Senator **Grassley**. And in fact your testimony today has presented the Judiciary Committee with several specific instances in which organized crime figures engaged in extortion while wearing a hat, so to speak, of a labor leader, and thereby they successfully eluded investigation by the FBI or prosecution because of the *Enmons* decision, right?

Mr. **Clarke**. That is a correct statement, yes, sir.

Senator **Grassley**. Is there a need for Federal jurisdiction over interstate extortion activities by organized crime that takes place under the cover of the *Enmons*, a legitimate union objective loophole?

Mr. **Clarke**. We believe that there is and we believe that it is important that there be a distinction made between sporadic or spontaneous acts of violence that may occur in connection with a highly charged situation where one's occupation or financial support is, at least in his own eyes, in jeopardy and he reacted in a manner that precipitates violence. And that should be viewed in one light versus the organized crime labor racketeer who uses that type of activity for their furtherance of illegitimate and illegal gains.

Senator **Grassley**. That is all the questions I have. But I have my friend and colleague from the great State of Pennsylvania, a person who has been very faithful in his service on my subcommittee with me. He has come in and I would defer to you for any statements you have as well as any questions you have of this witness.

Senator SPECTER. Well, thank you, Mr. Chairman. I do have a question or two. Mr. Clarke, on your last answer, you seek to draw a distinction between, as I understand your statement, a highly charged atmosphere where there may be some altercation or some scuffling or some dispute or perhaps an assault and battery on a picket line, as opposed to an organized crime situation where there is some pattern, some widespread use of extortionate purposes with physical violence. How do you suggest that a statute be drawn which would apply to one and not the other?

Mr. CLARKE. Well, I think the way that the——

Senator SPECTER. I do not think there is anybody disagreeing that if you can find some definition which would apply to organized crime on a pattern of activity, crossing State lines, that we would like to do whatever we can. The concern arises on just the kind of a situation that you have described, a highly charged atmosphere, something of a lesser matter.

Mr. CLARKE. Senator Specter, I think that the law as it is defined now or the proposed legislation deals with that in that it describes property damage or the minor bodily injury in such terms as to put it in a lower ranking of concern, namely, $2,500 in property damage and minor bodily injury.

And I think that some of those things are going to be decisions that have to be made and evaluated by the prosecutor.

Senator SPECTER. But where you have property damage in excess of $2,500, that is not an indication that it is organized crime. That is just a situation where somebody has done more property damage than $2,500.

Mr. CLARKE. That is correct, and I think that those individual situations would have to be viewed in the context of the facts as they present themselves.

Senator SPECTER. But we have to draw a statute. We have to draw a statute which will set standards. And if we have a statute which is directed against organized crime, that is one thing. But I would be interested to know how you suggest we draw the statute to be directed against organized crime.

Mr. CLARKE. Well, I do not have any ready answer for how you would draw the statute. I find the statute as it is presented to be acceptable and the intent and concern of the FBI and the Department of Justice in how that statute ought to be enforced is placed in the context of when I say that we in the Department of Justice and the FBI would look at these individual acts. Are they a spontaneous type of an action or is this something that frequently—I can give you an example.

Frequently, we have intelligence information from informants that identify particular organized crime groups that are behind these types of activities. And under the current state of the law, we are precluded from conducting any investigation because of the *Enmons* decision. There can be no prosecution if these individuals state as their purpose a, quote, "legitimate labor objective."

So, we are forestalled from even initiating an investigation where if that is a defense or a bar to prosecution. When it is a minor situation, I think those are decision that would have to be made based upon the facts as they present themselves with that intent and desire in mind.

Senator **Grassley**. I should clarify, if you would let me interrupt you, and you can go on with your questions.

Senator **Specter**. I yield.

Senator **Grassley**. I did ask about organized crime considerably in my questioning and I need to point out that that is just one small aspect. I mean, the purpose of the bill goes beyond that, and I wanted to make clear that we are not only trying to get at organized crime. That is just one aspect.

Senator **Specter**. Well, Mr. Chairman, as I understand what Mr. Clarke is saying, he is seeking to define a category of offense with organized crime and in his most recent answer he has come to a situation where there is preplanning. Now, that would be a significant evidentiary piece if the incident arises with planning as opposed to something that is spontaneous. That rises to a significantly higher level as a crime. Premeditation raises consideration of malice.

That is a substantially higher level. So that if you were to limit the applicability of Federal jurisdiction to situations where there is evidence of preplanning, that does elevate it.

But I understand the chairman would have it applicable to broader situations.

Mr. **Clarke**. Well, let me clarify my prior answer. I am not advocating that we would only undertake investigations in those instances where organized crime is involved. I think that there are situations that would give rise to when you have murders and heavy property damage, regardless of whether it is organized crime or labor racketeering. I think that those kinds of offenses rise to the level that would require a Federal presence and interest in investigating those types of events.

And as to the matter of preplanning as being a——

Senator **Biden**. Excuse me for a second. Why? Why would it rise to the level there if there is murder. If there is murder in the streets of Wilmington, DE, why would that not rise to the same level? If there is no organized crime component, there is no conspiracy, there is no premeditation, why?

Mr. **Clarke**. Because of the connection. When we define the activity in connection with labor racketeering or labor goals, the—in many instances these are perpetuated or perpetrated by labor racketeers and people who are influenced by organized crime.

And to try to be required to show the nexus of organized crime or labor racketeering to that particular act would be very difficult in many instances.

Senator **Biden**. Well, that is not the point the Senator from Pennsylvania was making, I did not think, but I will let him pursue his questioning and I will follow on from there because I do not understand your new found interest in pursuing this when you are trying to give us back bank robberies in our State. I have been trying to give you all money for the last 9 years and you all tell me you are overburdened, you are overloaded, that you have to back off on a whole range of issues that you say you will not pursue. And now you are telling me the presence of a murder is sufficient cause for a Federal presence. I have a lot of other things I want you to do, too, then.

Senator GRASSLEY. Let me call on Senator Biden now. He said he was done.

Senator SPECTER. I did not say I was done.

Senator BIDEN. No; I yield back to the Senator from Pennsylvania.

Senator GRASSLEY. You can still have the floor. I just thought that when I said I wanted to expand on it, then you said you were willing to give up the floor.

Senator SPECTER. No, no.

Mr. CLARKE. Just one followup. The murder is a part of the extortion in the Hobbs Act as opposed to the murder being a singular element.

Senator BIDEN. I understand.

Senator SPECTER. Mr. Clarke, you have a right under *Ashcraft* vs. *Tennessee* not to submit to relay grilling. There is a Supreme Court case on this, that it is inappropriate practice to have relay grilling. It has to be one at a time. So I advise you of your rights in that respect.

Senator BIDEN. All I want to do is give you money.

Mr. CLARKE. We appreciate that.

Senator SPECTER. That is what they all say, as they sometimes say. When you describe "minor offense," Mr. Clarke, I regret I could not be here earlier, but I understand that the Department of Justice can support this bill, if it does not apply to property damage under $2,500 or minor physical injury. How do you define minor physical injury?

Mr. CLARKE. Well, again, that would be an area that probably would be more appropriately addressed by the staff from the Department of Justice as opposed to the FBI. And that would be a decision that would be within the purview of the prosecutor and I am not sure that it would be appropriate for me to try to make that distinction.

Senator SPECTER. Well, I would be interested if the department has a standard to apply. If we are drawing a statute, we have to define what minor physical injury is. I do not believe we can just say minor physical injury because it is too vague.

Mr. Clarke, the key question in my judgment is would Federal prosecutions under the Hobbs Act, as contemplated by the proposed bill, S. 462, enable prosecutors to obtain convictions which State court prosecutors cannot obtain under existing laws which are present in every jurisdiction prohibiting assault and battery, aggravated assault and battery, assault with intent to kill, et cetera?

Mr. CLARKE. A simple answer to your question, Senator, is no, it would not, that in most instances that I am aware of there are State and local statutes which would proscribe that type of activity.

The problem that you—let me just say that in many of these instances, the State and local prosecutors have done a very fine job in investigating and prosecuting those types of offenses. But many times these kinds of events occur in small towns where the police departments may not have the capability to deal with that.

Many times they have evidenced themselves in various jurisdictions which would require a coordination between various police agencies. And in those types of instances, I think that the Federal presence is a necessary one. As we have seen, there have been cases that we have been presented with that we have been prevented from investigating them because of the *Enmons* decision.

We have referred them to local authorities, and the solution or prosecution has not resulted from that. Also, you have situations where it is very difficult for the local police agency to become involved in a situation of labor-management disputes in the town that they are enforcing the law.

Senator SPECTER. Why? Political hot potato?

Mr. CLARKE. Probably.

Senator SPECTER. Well, Mr. Clarke, that is the critical issue that I see and I commend the chairman for holding these hearings. I think they are very important hearings. But the critical issue in my mind is would S. 462 under Federal jurisdiction have some significant extra reach beyond what local prosecutors can do?

Senator GRASSLEY. May I add at this point, I do not have a list ready to submit, but we have come across some State laws that exempt collective bargaining activities from extortion under State law. So, you know, there is not in every instance in every State, you know, you cannot get a State prosecution in the absence of a Federal prosecution.

Senator SPECTER. Well, you can, Mr. Chairman, on charges of assault and battery or aggravated assault and battery or assault with intent to kill.

Senator GRASSLEY. Yes.

Senator SPECTER. I have been a prosecuting attorney for a good many years, and have prosecuted cases on labor racketeering and on labor goon squad activities. I was the trial prosecutor for the Local 107 Teamsters case in Philadelphia many years ago, a prosecution arising out of an investigation by the McClellan Committee.

And that case was highly charged and there was a lot of political pressure and there was a lot of goon activity, violence by the Teamsters in Philadelphia. And the prosecution was held in the State courts and convictions were obtained. And I think these cases where people have come forward and testified about violence, which have relationships to union activity are really egregious.

The question that always comes to my mind is why has not the local prosecutor acted. And there is a case in Philadelphia of Mr. Sigmund Kaye, who is on the witness list, and I am very much concerned about what has happened with respect to local prosecution. And that turns on what evidence is presented as to whether the DA could act on it, and if the DA could not act on it, could the U.S. attorney act on it any better.

There are laws in most of the States which authorize the State attorney general to supersede a local prosecutor to give help on State police investigations. There are procedures in many States which allow the failure of the action of a district attorney a private prosecutor to replace the district attorney, to take over on the prosecution. So there are many ways to move in and obtain the prosecutions. And it is that line of concern which troubles me.

If we have district attorneys who are not doing the job, we really ought to be raising hell with them. And I pursued a matter which we had hearings on last year that occurred in Delaware County, PA, and went into it very deeply after the hearing was over.

And what happened on that particular matter was that there was an agreement worked out where the victim did not want to pursue the matter, and had there been a Federal prosecution, the Federal prosecutor could not have done it without the victim's assistance.

But to the extent, Mr. Clarke, that you can shed light on that question, I would be very interested in it and have an open mind on the issue as to where a Federal prosecution would be able to succeed where a State prosecution cannot. Thank you very much, Mr. Chairman.

Senator **Grassley**. For the benefit of those who maybe do not know Senator Biden, he is the ranking minority member on the full committee and I appreciate very much his interest and his coming to this and his friendship.

Senator **Biden**. Thank you very much, Mr. Chairman. My concern runs fairly parallel to my friend from Pennsylvania. I find I have, Mr. Clarke, an immediate gut reaction to this legislation, which is, well, why not. Let us go get the so and so's.

And then as I go down the list of what we are going to be able to—what benefits derive from this and what in fact would be negative that would flow from this, I begin to have a much more blurred picture.

So let me focus on the two things that concern me the most because I have great respect, as I suspect you have observed over the years, for the FBI, your ability and your requirements to be involved in things that I have sought to get you involved in, not you personally, but the agency, that have a local component to them.

You said something I found somewhat interesting, and I suspect you would not have said it unless you were sure you were right and it is a surprise to me. And that is that if in fact you had evidence of organized crime being directly involved in an enterprise that was designed to extort funds from—extort anything from—a business operation that you were really precluded by the *Enmons* decision from proceeding, I did not think that was the case.

I thought you had under RICO, I thought you had under a whole series of other approaches the ability if you wanted to move on the participants in that activity for violations of crimes in addition to and separate and apart from the extortion portion.

And so my question is: What additional tool does this really give you as a practical matter? I am dealing with the organized crime portion. That is what I want to focus on first.

Mr. **Clarke**. The first distinction I would like to make is there is a difference between evidence and intelligence or information. So when you prefaced your statement, you referred to we had evidence. We may have information or intelligence.

The second part of your question deals with the, as I understand it, how this would help us when we have RICO and the Travel Act and other statutes which might help us. The Travel Act requires that you show actual interstate travel. The RICO statute requires that you show a series, two or more events, that have a common nexus to some type of criminal enterprise.

The Hobbs Act would require only a localized extortionate threat or violence.

Senator **Biden**. But as a practical matter, unless I have missed my mark and have not been educated properly by you folks for the last 12 years in dealing with almost exclusively the organized crime component, you are, unless you are talking about a new operation, a new organized crime family, a new organized crime target, the ability to find more than one event is not a particularly difficult burden that exceeds the burden of finding a single event.

I mean, I do not quite understand that.

Mr. **Clarke**. Well, the policy that we have right now, Senator, requires that when we have an event take place where there is violence or property damage in connection with a labor goal, that we must present that information immediately to the U.S. attorney's office for a prosecutive decision.

Senator **Biden**. Say that again for me now.

Mr. **Clarke**. When we have an event of violence or property damage in connection with an otherwise legitimate labor objective, that we present that information initially to the U.S. attorney's office for a preliminary prosecutive decision to determine whether they believe that the *Enmons* decision will have an impact on that particular prosecution. In most of these instances—in many of these instances, the U.S. attorney's office finds that in fact there would be a prohibition or a bar to prosecution because of the *Enmons* decision.

So we do not have the ability nor would we probably want to conduct continuing investigations on these isolated incidents to determine—Is there a connection with a prior incident.

Senator **Biden**. I think you made a very valid point and I understand the frustration of the FBI. But you know what it reminds me of? It reminds me of the 2-year investigation I did on espionage and leaks, both, and we find out when we went back and looked at all the damage assessments for the first time that anyone outside of the agency, the CIA in this case, was able to look at the damage assessments that the agency suggested had occurred; we found out that the real inhibition from moving forward with prosecution on these matters was administrative judgments made along the lines of the executive branch, Democrats and Republicans alike, that in fact short circuited the investigation; that there was no requirement at all for additional legislative ability to deal with the matter; that in fact it was a decision that said we do not want it to happen on our watch. We are just out.

And as a consequence of the change of administrative attitude, what we did, as you know, is we rewrote the guidelines with the help of the Republican attorney general and without much of a change in the statute, we have gotten a whole lot tougher on where the circuit breaks off.

For example, what used to happen is in many of these cases, it would be submitted for a preliminary decision and automatically would be short circuited because the agency would say it would in fact violate sources and methods. That was automatic. The check list was automatic.

When we went back and looked at every one of those cases for 2 years, we found out that in fact it was a real questionable judgment call whether that would occur, and we set up a new procedure whereby you would have to go the next step. Without belaboring the point, I would suggest to you there is a similar problem here; that there is a mind set in the Justice Department, that in fact if you cannot get it on grounds of that it would be able to be done with the amendment of the Hobbs Act, then do not pursue the rest. Do not move the next step. Do not move on.

And I would argue with you—and one of the things I plan on doing, if in fact, assuming this legislation passes or fails—and I am not sure where I am on it—assuming it passes or fails, I for myself am going to undertake an investigation of all of those cases, to do the same thing over the next year to determine whether or not there would have been ability to go forward with prosecution under the Hobbs Act as it is now in those cases where you all say you have not.

I suspect we are going to find you could have. I may be being a little presumptuous in that, but I suspect that will be the case.

Mr. **Clarke**. I would like to respond to that if I might, Senator.

Senator **Biden**. Sure.

Mr. **Clarke**. To put it in the perspective that it is currently, the--I wish that in all instances that the FBI was capable of knowing all of the ramifications of each instance that occurs. Unfortunately, I do not. We do have a significant intelligence base. We do have a cadre of informants who give us information that will shed light on the purposes behind these types of events.

When we have the information that indicates that these might be a part or series of incidents being controlled or directed by labor racketeers or organized crime, that information is furnished to the prosecutor at the time of the presentation. And in many of those instances there are ongoing investigations.

It is those isolated instances or those instances that we have an absence of that information that we are precluded from conducting any additional investigation. These matters have been of concern to the Bureau. They have been of concern to the Department of Justice. And recently Director Webster has directed, instructed that labor-racketeering be emphasized in our investigative priorities.

To the extent that we have restructed our organized crime section, we have recently formed a labor racketeering unit within that particular section to address the problems of labor racketeering. We are working very closely with the Department of Justice in long term investigations to try to develop and show the interrelationship of these various acts. But we still are presented with those instances where there is significant damage and bodily injury, that because of this decision and in the absence of any other information we are precluded from going forward.

Senator **Biden**. I understand that and I applaud your effort to go after labor racketeering. I think it is something that should be a priority within Justice. You know there are two things I have been pushing hardest on in these years. One is going after organized crime in the drug link and the other is the labor racketeering side.

My problem is, as you pointed out, the times when you do not continue the investigation, when Justice says not to go forward, is where there is an absence of intelligence data indicating that there is a nexus. My argument to you then, if that is the case, there is no reason necessarily to believe that there is an involvement of organized crime, so the rationale for the organized crime, this being an aid to organized crime, in fact begins to fall. My point to you is that this may be worth doing for reasons that Senator Grassley wants and others, but unrelated to organized crime.

My point to you—and I am not asking you to agree to it—my view is from looking at this is that this is not going to allow you any additional tool that you would not otherwise have where you have sufficient evidence to believe it is worth going on with a further investigation as it relates to the organized crime component.

But I am trespassing on your time too much. Let me ask one last question because I received a notice telling me I am supposed to be somewhere 20 minutes ago.

Senator GRASSLEY. In regard to that last point, you are talking like RICO, for example——

Senator BIDEN. I think RICO is an example.

Senator GRASSLEY. I think, though, you want to remember in that particular instance you are going to have to have the political officials in the department make the decision to move ahead, to act, and then under RICO you defer to State law for a definition of what is a crime. So in those instances where extortion is exempted from legitimate labor union activities, then you cannot have any prosecution under RICO.

Mr. CLARKE. Well, that is a very valid point, that when we have to rely on the State violations that are predicate offenses in RICO, assault is not. Vandalism is not. And so even though we could prove the nexus, we would not have the necessary predicate offenses for prosecution.

Senator BIDEN. Well, the fact of the matter is that you are right in rare instances, but most of the State statutes on extortion are better than the Federal statutes on extortion, number one.

But I do not want to debate that with you right now. That will come up. The RICO statute, just for the record, does in fact, as we all three have acknowledged, does in fact allow you—and the case specifically mentioning extortion, where there is extortion, if you have a pattern of racketeering activity, requires two acts of racketeering. You are right.

So, I mean, the point I want to make is that you are not absent, you are not totally precluded, as it stands now, where there is extortion, from being involved. There is a predicate of requiring a pattern. But again we can argue about whether that is sufficient or not. Let me get to my next question and then—because I am sure we are going to be debating this on the floor and other places at some length.

Senator GRASSLEY. From my standpoint, there is room to settle disagreement on the floor.

Senator BIDEN. And that is the next point I am about to make. The point that I thought that Senator Specter was pursuing and that is if the threshhold is changed, essentially what he was saying, is a point, I think, of potential negotiation. The second point is what I am about to raise, and that is that really it seems to me, my worry—let me tell you what my worry is. It may not be yours.

My worry is that those rare instances where a State prosecutor, a county prosecutor, a city or a town prosecutor, refuses to move forward on an egregious case or even one that is not egregious, for fear of his or her own safety, for concern about the politics of it in their region or for any other reason refuses to really move on what should be moved on; I do not, with all due respect, have any more or less confidence in the U.S. attorney than I do the district attorney in Philadelphia or in New York or Wilmington, DE. They are both good.

So, as far as I am concerned, that is not reason in and of itself to move forward to the State; only if there is some evidence that the State really or the city or the municipality refuses to move. Now, that is my concern, Joe Biden's. It may not be other people's.

As a consequence of that concern, I cosponsored what was the proposal that ended up being the compromise proposal we used in the—when we rewrote the Criminal Code, but we never got it passed ultimately, which said the following. It said that the—we had an amendment that had the effect of preserving the existing law, as interpreted by the Supreme Court decision, unless the Attorney General certifies in writing that the State's right to prosecute is clearly being abused by unwarranted inaction or interference.

In other words, there would be the circumstance where the Attorney General upon the recommendation of the FBI could in fact take from a State or locality jurisdiction of the matter because that State, that locality, that jurisdiction, refused to move forward and should move forward.

And all that was required was that the Attorney General in writing say the district attorney of Oshkosh—I should not pick that because there is a city of Oshkosh. The district of Xanadu refuses to move forward on a case that warrants prosecution. Therefore, we, the Federal Government of the United States, the attorney for that district, is going to prosecute the case.

Now, to me, that is a much—that solves the problem that is ultimately, I believe, the greatest worry of most people. It is clearly my only worry in this matter because I really do have—I mean, I am glad he is not here to hear me say such nice things about him, but Specter was one tough cookie as a prosecutor. And, very bluntly, I would have rather had Specter on the case than the U.S. attorney on the case in what was a highly celebrated case in Philadelphia.

There are thousands of Specters around the country, most of whom, unlike Specter, are very ambitious people. And, as a matter of fact, ambition is almost always served by successfully prosecuting celebrated cases. I have more faith in the local authorities to do that than I do Federal authorities who, in fact, have Presidents or Attorneys General—and I am not demeaning this President and this Attorney General—but Presidents or Attorneys General who, in fact, are more inclined to be subject to pressure than the local authorities.

I know that sounds heretical. But let me give you an example.

Senator **Grassley**. Can I comment?

Senator **Biden**. Let me finish this one point and then I will stop.

For example, the Teamsters, do you have any doubt—and I am not asking you to respond. But does anybody have any real doubt as to why there has not been more movement on the Teamsters over the years. Does anybody doubt that there may not be some political component to that that is more potent at a national level than at a local level.

The point I am trying to make is we are operating on the premise here that we can trust the Federal judgment to be tough on labor and overcome political thickets more than we can local. And I do not believe that and I think the evidence sustains that. There are Democratic and Republican Presidents who have refused to move on labor because of the presidents of international labor unions.

I found it ironic that—well, I am going to become somewhat—I may be—I should just stop here. But you understand the point I am trying to make.

Mr. **Clarke**. I would, but I would like to just say one thing because my mere silence may be interpreted as some kind of an endorsement of what you said.

Senator **Biden**. Oh, I know it is not.

Mr. **Clarke**. And that area that you raised is only one consideration, and I would want nothing that I have said here today to be interpreted to indicate that we have any doubt about the capabilities of local prosecutors and investigators to adequately address their responsibilities.

Senator **Biden**. Could you support—you may not be able to answer this. You would have to go back to the Director and to the Attorney General. But could you support the kind of amendment I suggested, that the jurisdiction only occur when in fact the U.S. attorney in writing suggests that the local authority is not vigorously pursuing it?

Mr. **Clarke**. I think those are issues that, as you point out, would have to be discussed by the Attorney General.

Senator **Biden**. I respectfully suggest to you to pass that on to the Attorney General and to your immediate superiors to ask what your position would be. And I would like for the record to get some response officially from the agency on that.

Senator **Grassley**. Could you have that in writing in 15 days for the record?

Mr. **Clarke**. I could not commit for the Department of Justice and that would have to be something that they would respond to, but I would be happy to relay that request to them.

Senator **Biden**. And to the Director.

Mr. **Clarke**. Yes.

Senator **Biden**. Thank you very much.

Senator **Grassley**. All I wanted to say in comment of your last point is that of course I would not be in a position to say that Federal prosecutors are sinless. I would also point out though that for every Senator Spector that we have, who did a good job of prosecuting, I think that through the hearings we had last year plus this year as well, we have had ample evidence of local prosecution, you know, being under political influence not to prosecute.

And I think that all we are doing basically is taking the Hobbs Act as it was between 1946 and 1972 and saying in a very real sense it worked then, and just want to undo the Supreme Court case and go back to that time in law when it seemed like there was less activity in this area and the ability of the Federal Government to prosecute tended to be a damper on activity that has evolved in the meantime.

Senator BIDEN. I think that is a very valid point to make. I am not sure I agree with the conclusion reached, but I think that is a valid reason to move forward if one believes that. The point I want to really make here is I think the best way, if it is going to be undone, the decision, would be to move in the direction I suggested, which is that you in fact require merely a letter from the U.S. Attorney General saying this is a case where, in fact, there has been undue pressure, whatever, but we have not moved forward at the local level, and we think there is sufficient reason to move forward at the Federal level.

I think that in and of itself could be the solution to that, but again I apologize for having to go and I thank my colleague from Iowa for allowing me so much time, because I think he is approaching this in a very, very straightforward manner. I do not think there is anything particularly hysterical about any of this. I think it is a legitimate concern. I think it is real.

And my concern is, A, how it functions, B, what it does to your resource allocation, and, C, what potential for abuse could move the other way in terms of impacting on legitimate collective bargaining agreements, as a means for the Federal Government to get a foot in the door to affect both business and labor in ways it cannot now. Those are my concerns. But, anyway, thank you very much.

Senator GRASSLEY. Thank you very much, Senator.

I have no further questions, Mr. Clarke, but you have been very patient both in waiting to get to the witness table in the first instance, and second, responding to what is not a typical interest in most committees, as shown by the attendance of the various subcommittee members or full committee members. And I think you need to be complimented on that point, that your testimony would bring this interest from people beyond just Chuck Grassley, as chairman of the Subcommittee on Administrative Practice and Procedure.

So I would ask that wherever there may be written questions, that they be submitted in 15 days if they can be. If they cannot, let us know.

Thank you very much.

Mr. CLARKE. Thank you, Senator.

Senator GRASSLEY. Our next witness is Mr. Sigmund Kaye. He is an investor in residential property in the Philadelphia area. This summer he was physically assaulted and seriously injured by a group of men whom he discovered destroying much of his property.

These men were apparently there with the knowledge and approval of union officials and were there for the purpose of destroying the renovation work that had been done with nonunion labor.

I want to apologize for what happened to you, Mr. Kaye, and thank you for coming here as a living example and, thank God, still a living example of what needs to be done to hopefully deter things like this from happening in the future.

Would you continue and then I will have some questions.

STATEMENT OF SIGMUND KAYE, PHILADELPHIA, PA

Mr. KAYE. Thank you. Before I read my statement, I would like to make a comment on some of what I have just heard and that being in particular the question brought up, why Federal authorities as opposed to State or local authorities.

Senator GRASSLEY. Your statement will be printed in total, if you want to summarize. If you want to read it, that is all right, too.

I thought, sir, maybe I was not paying enough attention. I thought you said you wanted to summarize your statement.

Mr. KAYE. I do intend to summarize the statement before me, but before I do, I would like to make a comment on what I have just heard.

Senator GRASSLEY. Yes, you can do that, and I also wanted to make clear to you that your statement would be printed in the record in toto.

Mr. KAYE. Oh, OK.

Senator GRASSLEY. So, unless you otherwise——

Mr. KAYE. I will summarize my statement.

Senator GRASSLEY. Proceed.

Mr. KAYE. OK. As far as I am concerned, the reason the Federal authorities need to be brought into this, my case is very clear cut. The Philadelphia police have been supplied with ample evidence as to who and what was involved in the crime committed upon myself. They have done nothing besides take a license plate number that I gave them and confirmed the fact that it did belong—the vehicle did belong to the carpenters union.

They interviewed the bus driver who took the fifth and said that I will not make comment and dropped the case. The Philadelphia police dropped the case. It has been my contention to the Philadelphia police all along that I can identify the people that assaulted me. OK. They made no efforts to bring those people forward for identification. My lawyer then submitted the case last fall to the DA's office. The response back to him was that it is an election year and nothing will be done. Now, that is a city official saying this to us, not only the police department, but the city.

We then went to the U.S. Attorney's office and submitted them the same evidence that we have submitted to everyone else, but no action has been taken by them as yet.

Senator GRASSLEY. Can I—you said that a local official said that your case would not be taken up because it is an election year?

Mr. KAYE. That was what was said to me by my lawyer, which was said to him.

Senator GRASSLEY. OK. Well, I guess that is just another example of one of several points we are trying to make during this hearing.

Mr. KAYE. That is why I wanted to bring it up.

Senator GRASSLEY. I appreciate that. Go ahead.

Mr. KAYE. I will now summarize my statement.

My name is Sigmund Kaye and I am a resident of Philadelphia, PA. I come before this committee today in hopes that my testimony shall help facilitate the decision to amend the Hobbs Act so that the Federal jurisdiction is restored over extortion and union violence.

I would like to make note that I am not antiunion, just merely antiviolence. I am a member of a small partnership which acquired two buildings in Philadelphia which we have begun to renovate. As of last summer, we hired a contractor, Mr. William Staples, who is a nonunion carpenter, to do the construction on the property.

On or about August 9 or 10 of last year a bus, a gray bus pulled up in front of 2120 and 2122 South Street, which is my property, and a group of men got out of it, went into the building and told my carpenters to get off the job. They were no longer working that day.

They gave my foreman a business card, which had the business agent of the carpenters union's name, phone number, and address on it. They told my contractor to contact the business agent.

He did so and came up with an agreement, a deal with the carpenters union that they would hire one part-time union carpenter. Two weeks later on August 23, I had made arrangements to meet someone at the job site to do some demolition work for me.

Upon arrival, I saw this gray bus, which I suspected to be this same gray bus that I had heard about 2 weeks prior, sitting in front of my property.

Being somewhat leery of the situation, I parked down the street and walked toward my buildings and heard pounding, lots of noise going on inside. I got to the front door and saw approximately 15 men inside with two by fours and sticks and bare hands tearing the inside of my building apart. They were destroying the dry wall, tearing it off the walls, tearing down two by fours, walls.

And as I approached the front door I was halted by two men standing guard and was pushed out into the street and the rest of the men came out of the building from inside and formed a circle around me, at which time I questioned what they were doing destroying private property.

They said, you had better get out of here. This has nothing to do with you. We had a deal with this guy. He did not pay off. This is what he gets. I questioned them a little more as to what gives them the right to destroy private property and the leader of this so-called goon squad said somebody better teach this guy a lesson. And they did.

They began to beat me about the head and face. After several punches I was knocked to the ground at which point I was kicked and hit about the face. I was taken—excuse me. As I was left on the ground battered and bleeding the 15 men turned around and walked back to the bus, got back into the bus, and as they were doing so, I got up off the ground, walked behind the bus, at which time two witnesses saw me, battered and bruised, and I got the license plate off the back of the bus.

We called the police. The witnesses and I called the police. I gave them the information of everything that just happened. They took me to the hospital and I was treated for my injuries and released.

A couple of weeks later I started experiencing paralysis in my left arm. I underwent—I had a doctor, underwent many tests, was placed in this brace. At the beginning of February I had reconstructive surgery for my neck. I had two herniated discs and a crushed vertebra. My neurosurgeon says that it is a direct result of the beating that I took.

After I was released from the hospital, I contacted Mr. Staples, my contractor, and informed him that I had just been beaten up by the carpenters union. In my presence, he called the business agent, the name on the card that was given to him by the union. And the conversation went something like this. They were talking back and forth saying I thought we had a deal. Why was your goon squad at the property today. The other end of the phone, I can only imagine, was we do not know anything about it.

Mr. Staples said you beat up one of the owners of the building. What I heard on the other end was we did not know that was the owner of the building. They came to a mutual agreement of terms. The carpenters union would supply my contractor with a union carpenter free of charge for a period of 2 to 3 weeks to repay the damages to the property, not to myself.

My attorney consequently unsuccessful in arousing the Philadelphia Police Department and the district attorney's office, wrote a letter to the U.S. Attorney's Office, of which no action at this time has been taken.

The importance that I place on the proposed amendment to the Hobbs Act is self-evident. Unfortunately, it was necessary for me to be brutally beaten before becoming aware of the inadequacies of our current laws.

I would also like to state that of all the law enforcement agencies in Philadelphia, the only people that have taken active, and I do mean active, interest in this case, in the pursuance of this case, have been the FBI. They have done this voluntarily because they are interested in the case, but their hands are tied because this is not a Federal crime. That is why I am here.

[Material referred to follows:]

WRITTEN QUESTIONS FOR SIGMOND KAYE

Mr. Kaye, some of the questions that I will be asking may sound repetitive. I ask your indulgence in that we are trying to eliminate any ambiguity that might appear in the record.

Question. Do you engage in the business of renovating buildings in the Philadelphia area?

Answer. Yes.

Question. Are you engaged in this business full-time?

Answer. No.

Question. And has there been any effort to get you to hire union workers?

Answer. Yes.

Question. When did you first experience the use of force, violence, or fear, directed against you and your employees?

Answer. First on or about August 10, 1983 then again on August 23, 1983.

Question. By whom were these acts committed?

Answer. Members of the carpenters union.

Question. Were these acts committed with the approval, knowledge, and authority of officers of the union?

Answer. I would assume so.

Question. In fact, you believe these people were paid by the union to ride that "Grey Bus", is that correct?

Answer. Yes.

Question. What was the purpose of the force, violence, or fear directed against you?

Answer. The purpose was to get us to hire union help.

Question. Was it to frighten you into complying with the union's demands out of fear for your safety, or to increase the cost of doing business if you did not agree to their demand that you hire union workers?

Answer. It was more for complying with their demands, than to increase costs.

Question. Did it have the intended effect on you, of getting you or others to hire union members to do the renovation work?

Answer. At one point we hired a union man but that was before they beat me up.

Question. Did you or someone else contact the police or other local law enforcement officers about the attack on you and destruction of your property?

Answer. Yes.

Question. What was the response from local law enforcement officers?

Answer. So what!

Question. Were any arrests made?

Answer. No.

Question. Were any charges filed?

Answer. No.

Question. Has any one been prosecuted at this time?

Answer. No.

Question. Then there have been no arrests, no charges filed, no one has been prosecuted. No sentences imposed. Has anything at all happened to the people who threatened you with physical injury and property damage?

Answer. No, they are still threatening others.

STATEMENT OF SIGMUND KAYE
IN REFERENCE TO HOBBS ACT
AMENDMENT OF 1983.

My name is Sigmund Kaye and I am a resident of Philadelphia, Pennsylvania. I come before this Committee today in hopes that my testimony shall help facilitate a decision to amend the Hobbs Act so that federal jurisdiction is restored over extortionate union violence. Prior to setting forth the details of the incident in which I was involved I wish that the committee be aware that I am not "anti-union" merely anti-violence.

I am a member of a small partnership which acquired two, two floor adjacent buildings in a section of Philadelphia that is currently undergoing renovation. We are a small group of investors which own no other property but the one I am going to tell you about.

One of our investors is a skilled carpenter who has been working in and about the City of Philadelphia for decades. Given the fact that the buildings we purchased are nothing more than shells, extensive gutting and construction work was needed to render this property useful for either residential or commercial purposes.

We started work in the summer of 1983, and dependent upon our needs hired one or two non-union assistants. Prior to August of 1983, Mr. William Staples, a non-union carpenter and long time friend was working at the property with other non-union assistance. A large grey bus pulled up on front of the property and a half dozen men exited the bus and entered the property. These men informed Mr. Staples that it was time for him and his crew to stop work for the day, and strongly suggested that they contact John Franconi, the Business Agent for the local Carpenter Union. At that time, threats were made to shut down the operation because of a lack of union employees.

Consequently, Mr. Staples, in my presence, contacted Mr. Franconi. A deal was arranged whereby one part-time union employee would be hired for the completion of the job. In return, promises were made that there would be no further interruption nor problems with the Carpenters Union.

On August 23, 1983, I had made arrangements to meet another independent contractor who was going to clear some debris from the property. I arrived at the property prior to the estimated time for this meeting and noticed a bus similar to the one previously described to me by Mr. Staples and his crew. I elected to park my automobile a half block from the building and approached cautiously. Since the buildings were still a partial shell I observed from the street approximately 15 people inside. Each of the men inside were dressed as one might anticipate a laborer to appear. However, construction was not their task but rather destruction. Someof the men were swinging 2x4's at newly constructed drywall. Others were throwing bricks through other portions of drywall while the remaining men were generally causing havoc and tearing down whatever construction we had accomplished.

Without identifying myself I inquired into the conduct of these individuals asking what authority they had to destroy private property. At no time did I identify myself as the owner of the property. Within minutes approximately 15 men exited from the building and surrounded me. Some of the men were wearing T-Shirts which stated "Union Carpenters Hit Harder". Our conversation concerning their right to destroy property continued until one of the men suggested that the group "teach me a lesson". Within seconds I was being punched and kicked by several of the men. Defenselessly, I fell to the ground whereupon the kicking continued for what felt like hours, but must have been merely minutes.

The men returned to their bus leaving me lying on the sidewalk and pavement outside of the property. Stumbling forward I dragged myself to a position so that I would be capable of noticing the license plate of the bus. In addition, since this incident occurred in broad·daylight, there were, at least two other eyewitnesses who also noticed the license plate of the bus. One of the witnesses contacted the Philadelphia Police Department suggesting that they come to the scene.

The property that we own is fortunately located within a city block of one of Philadelphia's hospitals. I was assisted and carried to the hospital for treatment and care. In belief that my physical wounds would heal, I insisted on being discharged within 24 hours of the incident. It was not until several weeks later that partial paralysis set in immobilizing myself for several weeks.

Upon learning of this incident Mr. Staples contacted the Carpenters Union Business Agent, John Franconi, to ascertain why the Union sent the "goon squad" contrary to their agreement. According, to Mr. Staples, Mr. Franconi stated that the union workers had no knowledge that the gentleman that they had beaten was the owner of the property and in return the union would provide a carpenter for one week free of charge.

Prior to realization of the extent of my injuries, I consulted with private counsel as to what course of conduct I should pursue against the Carpenters Union. At suggestion of counsel full cooperation was given to teh Philadelphia Police Department. It is my understanding that the Philadelphia Police Department interviewed the witnesses to the incident, confirmed the license plate number that the witnesses and myself had noted, and attempted to interview members of the Carpenters Union. The license plate revealed that the bus which transported the men that beat me and destroyed my property was registered to the Metropolitan District Council at 1803 Spring Garden St., Philadelphia, PA. This is the same address of the local Carpenters Union. According to the Philadelphia Police Department, the driver of the bus was the only individual interviewed. He denied that the bus was in the vicinity of my property on the date that I was beaten. This concluded the investigation of the Philadelphia Police Department. As of this date, the investigation is closed.

My attorney Daniel S. Bernheim, consequently was unsuccessful in arousing the Philadelphia District Attorney's Office to pursue the matter further. Whereupon Mr. Bernheim contacted the Assistant United States Attorney for the City of Philadelphia. As of this date their office has, to my knowledge, not pursued this matter.

On February 2, 1984, I underwent surgery in order to restore full mobility in my right arm and relieve pressure upon my back. I was discharged so that I may make the trip to Washington to appear before this committee. The importance that I place on the proposed amendment to the Hobbs Act is self evident. Unfortunately it was necessary for me to be brutally beaten before becoming aware of the inadequacies of our current laws. Whereas, the proposed amendment before this committee has been pending for considerable time with, I presume other stories similar to mine. Those stories, I submit are also self evident - self evident of the need for change. Thank-you.

Senator GRASSLEY. Well, thank you very much. And I had a long list of questions. I am going to submit those to you in writing because we have run much longer than I anticipated. But I had one question I wanted to ask you. Is it true that the people who were there beating up on you, did they wear T-shirts that said, "Union carpenters, we hit"——

Mr. KAYE. "Union carpenters: we hit harder."

Senator GRASSLEY. Hit harder. They sure did.

Mr. KAYE. They sure did.

Senator GRASSLEY. Thank you, Mr. Kaye. And we will submit those to you in writing. You can take them with you and then we would appreciate your responses to them.

Mr. KAYE. Certainly.

Senator GRASSLEY. Thank you.

Our next witness and last witness, Mr. Laurence Gold, special counsel for the American Federation of Labor and the Congress of Industrial Organizations. He is here to represent the position of the AFL-CIO on this legislation.

Before you proceed, Mr. Gold, I would like to note for the record, as well as for the audience here today, that the Teamsters Union was scheduled to appear as well, but they were forced to cancel due to schedule conflicts. I would like to have you proceed now. Thank you very much for coming and thank you for being patient as we took a long time today to get to you.

STATEMENT OF LAURENCE GOLD, SPECIAL COUNSEL, AFL-CIO

Mr. GOLD. Thank you, Senator. It is the position of the AFL-CIO that the proposal embodied in S. 462 to amend the Hobbs Act so as to expand its reach during labor disputes is unnecessary and unwise and that the bill's grant of authority to the Federal Government to intervene in labor disputes on the employer's side alone is unfair to workers who engage in collective bargaining.

S. 462 would overrule the Supreme Court's decision in *United States* v. *Enmons*. In that case, the Court held that the Hobbs Act's prohibition against extortion does not reach the use of physical force or the threatened use of such force in connection with an attempt during a labor dispute to achieve such legitimate objectives as improved wages, hours, and other terms and conditions of employment.

The paramount and perhaps the sole purpose of the bill is to increase Federal authority to prosecute workers who are engaged in strikes for better wages and working conditions. As the Court recognized in *Enmons*, the Hobbs Act reflects a congressional determination as to the area of proper Federal concern with respect to the crimes of extortion and robbery. That congressional determination includes a judgment as to the appropriate roles of the Federal Government and of the States in policing threats or violence that occur in connection with legitimate labor disputes.

Congress, in the Court's words, has recognized a strong Federal interest in preventing unions or union members from using their protected status to exact illegitimate payments from employers; for example, payments for unwanted and superfluous services.

On the other hand, where union objectives are legitimate—to improve wages and working conditions for labor actually performed—unlawful force in connection with efforts to achieve those objectives is no different from the misuse of force in any other context. Congress has therefore concluded that such wrongdoing ordinarily policed by the States should not convert legitimate union bargaining demands into wrongful conduct and should not be viewed as a matter of Federal concern.

Under S. 462 extortion is stated to be obtaining property from another induced by actual or threatened force, violence, or fear thereof. The statutory language expressly disclaims an intent to exclude Federal jurisdiction over an offense if it involves force, violence, or fear thereof, and takes course in a legitimate business or labor dispute or in the pursuit of a legitimate business or labor objective.

Applying that provision to strike situations, union members would be subject to an extortion prosecution if the union is seeking to obtain employment benefits and during the course of the labor dispute one or more of its members uses physical force or so much as threatens to use such force. The coincidence of union bargaining demands, no matter how legitimate, and such strike misconduct or the threat of strike misconduct would make out the elements of a case of extortion sufficient to permit a prosecutor to secure an indictment and to have the case sent to the jury.

At that point the union member would be permitted to defend himself by showing that his conduct or his threat was incidental to peaceful picketing in the course of a legitimate labor dispute and consisted solely of minor bodily injury or minor damage to property not exceeding $2,500 or a threat thereof. This approach, of course, takes the burden of making an extortion case off the prosecutor who should properly bear it and places that burden on the accused.

Moreover, it is difficult if not impossible to understand how the defense would apply to a prosecution against a threat. Further, the terms "incidental to peaceful picketing" and "minor bodily injury" are so vague as to provide little or no protection. Finally, those two terms as well as "minor damage to property," which is defined, are so limited as to permit prosecutors to twist the law of extortion into a novel and grotesque shape. We are unaware of any other situation in which a lawful demand for a lawful payment standing alone makes any subsequent misuse of force or the threat to use force by any one of the perhaps thousands of individuals who might benefit from the payment subject to an extortion prosecution. And there can be no dispute that such an expansion of the Hobbs Act loses all touch with the reason for providing Federal jurisdiction over extortion in the first place, to check racketeering activity.

In tacit recognition of the force of the foregoing criticism, S. 462 also creates an affirmative defense that the force or threat was not intended to extort property. That defense is at best a cosmetic. In an extortion prosecution, the prosecutor must establish an intent to extort and must do so in a manner that shows wrongful intent beyond a reasonable doubt. To say that the defendant has an affirmative defense that consists of the privilege of disputing the prosecutor's showing is in legal terms to say nothing at all.

The extension of Federal power worked by S. 462 is particularly inappropriate because it is a perversion of the national labor policy. For the Federal Government to respond to two identical acts during the same labor dispute—one, the unlawful use of force or violence or the threat thereof by an employer opposed to union bargaining demands, the other, the same conduct or threat by a union member who is supporting those demands—by subjecting the union member and the union member alone to stiff Federal penalties is not only incompatible with the historic division of authority between the States and the Federal Government, but also improperly places the Federal prosecutorial power on one side, the employer's side of numerous labor disputes. While S. 462 makes some surface appearance of even handedness by stating that misconduct for legitimate business objectives as well as for legitimate labor objectives is covered, the reality of labor-management belies the statutory language. The employer would not be subject to such prosecution even if he or his agents engage in widespread violence. In the nature of things, the employer does not demand or receive the employee's property in or as a result of collective bargaining.

Particularly in light of the misapprehensions that have been stated in this regard, I wish to conclude by underlining the point that strike related misconduct by employees or unions is now subject to punishment by the States and localities. In addition, misuse of the strike weapon for illegitimate ends is now a Federal crime under the Hobbs Act. And the use of explosives during strikes is now punishable by Federal law as well. Incidents of arson where State lines are crossed are also subject to Federal investigation and prosecution. Indeed, not a single wrong that would be made a Federal crime by S. 462 is not also a Federal, State, or local crime today. The bill will not close any enforcement gaps left open by either State, local, or Federal law.

In sum, no case has been made for the proposition that S. 462 addresses a serious problem that is peculiarly susceptible to solution by the Federal Government. That being so, S. 462 should not be enacted.

I would ask, Mr. Chairman, that our entire statement, from which I have excerpted, be put into the record.

Senator **Grassley**. It will be, Mr. Gold.

[Material referred to follows:]

No. 84-32

STATEMENT OF LAURENCE GOLD, SPECIAL COUNSEL, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, ON S. 462, A BILL TO AMEND THE HOBBS ACT (18 U.S.C. §1951)

May 1, 1984

My name is Laurence Gold. I am Special Counsel to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). It is the position of the AFL-CIO that the proposal embodied in S. 462 to amend the Hobbs Act (18 U.S.C. §1951) so as to expand its reach during labor disputes is unnecessary and unwise, and that the bill's grant of authority to the federal government to intervene in labor disputes on the employer's side alone is unfair to workers who engage in collective bargaining.

There is no dispute that an assault, or the willful destruction of property during a labor dispute — or at any other time — is a wrong that should be promptly investigated, prosecuted and, where the prosecution is successful, punished. We wish to take this occasion to emphasize that neither the AFL-CIO nor any of its affiliates condones picket line misconduct and that our unions make extensive efforts to assure against such misconduct. In those few instances in which they fail, almost without exception the wrongdoing is effectively dealt with by the state and local authorities.

To be sure, the organizations supporting S. 462 would have Congress and the public believe otherwise. In an effort to garner support for the bill, they have mounted a public relations campaign to malign the millions of American workers who are union members and the labor movement. Their object is apparent: to undermine unions and collective bargaining and to raise money for their unionbusting efforts. Their tactic is equally apparent: to ignore or distort the facts.

S. 462 raises fundamental questions on the proper role of the federal government in law enforcement. That being so, it is the burden of the proponents of S. 462 to show that the bill addresses a serious national problem; that the states and localities are not able to meet that problem; and that the federal government is better able to solve that problem than state and local officials.

Judged on these criteria, S. 462 should not become law. The problem of striker misconduct during legitimate labor disputes it addresses is at most a secondary one. The states and localities are meeting their peacekeeping responsibilities. And, the federal government is not better situated to deal with that problem than local law enforcement authorities.

S. 462 would overrule the United States Supreme Court's decision in United States v. Enmons, 410 U.S. 396 (1973). In Enmons, the Court held that the Hobbs Act's prohibition against extortion does not reach the use of physical force or the threatened use of such force in connection with an attempt, during a labor dispute, to achieve such legitimate objectives as improved wages, hours and other terms and conditions of employment. The paramount and perhaps the sole purpose of the bill is to increase federal authority to prosecute workers who are engaged in strikes for better wages and working conditions.

As the Court recognized in Enmons, the Hobbs Act reflects a Congressional determination as to the area of proper federal concern with respect to the crimes of extortion and robbery. That Congressional determination includes a judgment as to the appropriate roles of the federal government and the states in policing threats or violence that occur in connection with legitimate labor disputes.

Congress, in the Court's words, has recognized a strong federal interest in preventing unions or union members from using "their protected status to exact" illegitimate "payments from employers", for example, "for unwanted and superfluous services." (410 U.S. at 403.) On the other hand, where union objectives are legitimate, e.g., improved wages and working conditions for labor actually performed, unlawful force in connection with efforts to achieve those objectives is no different from the misuse of force in any other context. Congress has therefore concluded that such wrongdoing, ordinarily policed by the states, should not convert legitimate union bargaining demands into wrongful conduct and should not be viewed as a matter of federal concern.

The Enmons decision is faithful to the views of the Congress that enacted the Hobbs Act. The Court there stated that to extend the federal power of criminal prosecution as S. 462 proposes to do would be an interference with "legitimate activity on the part of labor people or labor unions." (Id. at 404.) And, the Court emphasized that:

> The Government's broad concept of extortion — the wrongful use of force to obtain even the legitimate union demands of higher wages — is not easily restricted. It would cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying or affecting commerce. The worker who threw a punch on the picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine. [Id. at 410, footnote omitted.]

The Congress that wrote the Hobbs Act struck the proper balance between federal and state authority. Under S. 462, extortion is stated to be "obtaining property from another *** induced by actual or threatened force, violence or fear thereof ***." The statutory language expressly disclaims an intent "to exclude Federal jurisdiction over [an] offense[] *** if it involves force, violence or fear thereof [and] takes place in the course of a legitimate business or labor dispute or in pursuit of a legitimate business or labor objective."

Applying that provision to strike situations, union members would be subject to an extortion prosecution if the union is seeking to obtain employment benefits and during the course of the labor dispute one or more such members uses physical force or so much as threatens to use such force. The coincidence of union bargaining demands, no matter how legitimate, and such strike misconduct or the threat of strike misconduct would make out the elements of a case of extortion sufficient to permit a prosecutor to secure an indictment and to have the case sent to the jury. (See United States v. Caldes, 457 F.2d 74, 78-79 (9th Cir. 1972).)

At that point, the union member would be permitted to defend himself by showing that his conduct or his threat was "incidental to peaceful picketing in the course of a legitimate labor dispute *** and consisting solely of minor bodily injury or minor damage to property not exceeding $2,500 *** or a threat [thereof]." This approach, of course, takes the burden of making an extortion case off the prosecutor who should properly bear it and places that burden on the accused. Moreover, it is difficult if not impossible to understand how the defense would apply to a prosecution against a threat. Further, the terms "incidental to peaceful picketing" and "minor bodily injury" are so vague as to provide little or no protection. Finally, those two terms as well as "minor damage to property," which is defined, are so limited as to permit prosecutors to twist the law of extortion into a novel and grotesque shape. We are unaware of any other situation in which a lawful demand for a lawful payment, standing alone, makes any subsequent misuse of force or the threat to use force by any one of the perhaps thousands of individuals who might benefit from the payment subject to an extortion prosecution. And there can be no dispute that such an expansion of the Hobbs Act loses all touch with the reason for providing federal jurisdiction over extortion in the first place —to check racketeering activity.

In tacit recognition of the force of the foregoing criticism, S. 462 also creates an affirmative defense that the force or threat "was not intended to extort property." This defense is, at best, a cosmetic. In an extortion prosecution the prosecutor must establish an intent to extort and must do so in a manner that shows that wrongful intent beyond a reasonable doubt. To say that the defendant has an affirmative defense that consists of the privilege of disputing the prosecutor's showing is, in legal terms, to say nothing at all.

The extension of federal power worked by S. 462 is particularly inappropriate because it is a perversion of the national labor policy for the federal government to respond to two identical acts during the same labor dispute — one the unlawful use of force or violence or the threat thereof by an employer opposed to union bargaining demands, the other the same conduct or threat by a union member who is supporting those demands — by subjecting the union member and the union member alone to stiff federal penalties. This is not only incompatible with the historic division of authority between the states and the federal government, it also improperly places the federal prosecutorial power on one side — the employer's side — of numerous labor disputes.

While S. 462 makes some surface appearance of evenhandedness by stating that misconduct for legitimate "business objective[s]" as well as for legitimate "labor objective[s]" is covered, the reality of labor-management relations belies the statutory language. The employer would not be subject to such prosecution, even if he or his agents engage in widespread violence; in the nature of things, the employer does not demand or receive the employee's property in or as a result of collective bargaining.

There are three points that bear special emphasis in weighing the wisdom of S. 462. First, strike-related misconduct by employees or unions is now subject to punishment by the states and localities. In addition, misuse of the strike weapon for illegitimate ends is now a federal crime under the Hobbs Act. And the use of explosives during strikes is now punishable by federal law as well. (See 18 U.S.C. S844.) Incidents of arson where state lines are crossed are also subject to federal investigation and prosecution. (See 18 U.S.C. S1952.) Indeed, not a single wrong that would be made a federal crime by S. 462 is not also a federal, state or local crime today. The bill will not close any enforcement gaps left open by either state, local or federal laws.

Second, judged on general principles, there is no warrant for further expansion of the federal role. The Justice Department's Task Force on Violent Crime has concluded that, except in extraordinary situations, the federal government should provide indirect assistance to the states by using federal laws already on the books (such as the Fugitive Felon Act) and technical assistance (such as laboratory analysis and fingerprint identification). As the Task Force recognized, the unique resources and expertise of trained federal officers are desperately needed to counter certain kinds of criminal activity but conduct such as breaches of the peace by pickets does not fit within that category. Those are incidents that can be and are being effectively handled by the states.

Third, the supporters of S. 462 base their argument on a mere handful of incidents — and often misstate what happened in those instances. Their focus is on the two percent of the situations where there is a lockout of employees or a strike. This distorts reality by ignoring the remarkable accomplishments of collective bargaining which has developed over the years as the means for introducing a measure of democracy into employer-employee relationships. Without collective bargaining, the individual worker has no voice. With collective bargaining, he or she shares with other employees an opportunity to use an orderly procedure for establishing conditions that protect job security, health and welfare programs, pension benefits, and wages and working conditions.

As practiced in this country, collective bargaining recognizes the right of employers to disagree with workers, and the right of workers to disagree with management. Such disagreements are rare. In fact, year in and year out 98 percent of all contracts between management and labor are settled without any strike. To put this remarkable accomplishment in perspective, it is well to note that approximately 60,000 collective bargaining agreements are negotiated each year. The proponents of S. 462 stress in particular the labor disputes that must be settled on the picket line. Picketing is a form of free speech, protected by the First Amendment. Throughout the history of this country, picketing has been used to voice opinions on a variety of issues. Generally the people who carry a picket sign do so because they have a strong commitment to their cause. When union members walk a picket line, they are risking their paychecks — and sometimes their jobs. They may be protesting unlawful or unreasonable action by the employer. It is no wonder that in situations such as these, emotions may run high. Nonetheless, strikes are usually short, the picketing is peaceful and an agreement between labor and management is reached. For in most negotiations, both sides recognize that in resolving labor disputes, clear thinking and compromise are required — not the use of force.

On rare occasions, such disputes are marked by force or violence. But, given the one-sided application of S. 462, it is well to remember that when such incidents occur, the wrongdoing may be precipitated by either side — by a worker seeking better wages or working conditions, or by an employer or supervisor resisting the worker's efforts to improve his situation.

In light of the equally one-sided propaganda in support of S. 462, it is also well to remember that the men and women of the American labor movement are law-abiding citizens. Even when they have laid their paychecks and their jobs on the line during a strike; even when they watch employers hire strikebreakers and private police forces to threaten their jobs and their economic well-being, union men and women conduct themselves responsibly. Instances of strike-related violence are so rare that the FBI's annual crime report does not list such wrongs as a separate statistical category. Indeed, in the specialized high risk areas where federal jurisdiction already exists, by virtue of the provisions that make bombing and arson federal crimes, the federal agencies report that the total number of "labor-related" bombings and arson incidents is small. As reported by the Bureau of Alcohol, Tobacco and Firearms, there were 21 "labor-related" bombing incidents out of 1,247 reported and 15 arson incidents out of 329 reported throughout the United States in 1981. In 1978, the comparable numbers were 38 bombing incidents and 15 arson incidents. So that there can be no misunderstanding, these totals include wrongoing by employers and by third persons — these are not statistics on union wrongdoing.

In sum, no case has been made for the proposition that S. 462 addresses a serious national problem that is peculiarly susceptible to solution by the Federal Government. That being so, S. 462 should not be enacted.

Senator GRASSLEY. I think I am going to do as well, submit questions to you because of the Republican and Democrat caucuses that start at 12:30.

But I just wanted to tell you that one of the points I will be trying to get at in questioning, just so that you know the line of questioning I was going to take, is the extent to which there might not be violation of State and local law in the instance of extortion where several States do not apply it to labor, collective labor negotiations. And I would like to have you, I suppose, state then how would those cases be prosecuted.

You say there is not a need for Federal legislation; then they are not going to be done under State law either, at least in the case of extortion.

Mr. GOLD. I would very briefly, if I might take a moment, respond to that question. We do not think that in cases where the end is legitimate, there is extortion in any rational sense of that term. There are many States that in our view take the correct position, just as the Hobbs Act takes the correct position. What we say is that to the extent there is misconduct, either by employers and their agents or by unions and their members during the course of a labor dispute, the misconduct ought to be prosecuted for what it is, vandalism, assault, violence, whatever, and the same penalties ought to be imposed on employers and their agents who misconduct themselves and on union members and their officers who misconduct themselves. We do not hold any brief for the proposition that under any law the coincidence of a labor dispute and bargaining demands and the misuse of force or the commission of acts of violence add up to extortion; they add up to precisely what they would add up to in any other circumstance, namely, the kinds of crimes that would be prosecuted even if there were no labor dispute and no bargaining demands.

Senator **Grassley**. Well, I thank you for taking time out to comment on that and I will submit the other questions and even maybe some expansion of this point at that. And I want to thank you for attending.

I want to say to the audience at large, I thank you, too, for being patient. And this is the sixth day of Senate hearings on S. 462 and similar legislation in both the 97th and 98th Congresses. All relevant union and business groups now have had an opportunity to make their views known, as have victims of union violence.

It is my hope that we can now proceed to reporting the bill out of the Judiciary Committee and get this measure to the floor of the Senate for a vote on closing the *Enmons* loophole. There is at least some doubt, however, on whether the house will act at all. But this issue and this problem, I would like to say to everybody, will not go away. We will continue to build the case for reversing the *Enmons* decision, as long as there are victims of strike related violence. Our meeting is adjourned.

[Whereupon, at 12:32 p.m., the hearing was adjourned.]

[The following letters were subsequently supplied for the record:]

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS • WAREHOUSEMEN & HELPERS
OF AMERICA
25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

OFFICE OF
GOVERNMENTAL AFFAIRS
• PAUL R. LOCIGNO •
DIRECTOR

April 23, 1984

The Honorable Strom Thurmond
Chairman, Committee
on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Thurmond:

Thank you for your recent letter in which you asked me to testify before the Senate Judiciary Committee regarding S. 462, a bill to amend the Hobbs Act. Please accept my apology for not responding sooner, but I have just returned from our General Executive Board Meeting.

While I certainly appreciate your invitation to testify, I regret that I will be unable to do so, since my schedule has me out of town on May 1, due to a long-standing commitment to attend to Teamster business in the Western states.

Nevertheless, I have asked our Labor Counsel, Robert Baptiste, to represent me at the hearing, and he will be glad to assist you in any you wish. I hope this arrangement will meet with your approval. Please feel free to call us for any assistance we can render.

Sincerely,

Jackie Presser

Jackie Presser
General President

JP/se

cc: Robert Baptiste, Labor Counsel
Paul Locigno, Director-Governmental Affairs
David Sweeney, Director-Legislation

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

EXECUTIVE COUNCIL

LANE KIRKLAND PRESIDENT **THOMAS R. DONAHUE** SECRETARY-TREASURER

John H. Lyons
S. Frank Raftery
Glenn E. Watts
Angelo Fosco
Lloyd McBride
Wm. W. Winpisinger
Wayne E. Glenn
John J. Sweeney
Barbara Hutchinson
Gerald W. McEntee
Patrick J. Campbell

Thomas W. Gleason
Murray H. Finley
Sol C. Chaikin
Charles H. Pillard
Kenneth T. Blaylock
William H. Wynn
Robert F. Goss
Frank Drozak
Richard I. Kilroy
William H. Bywater
Kenneth J. Brown

Frederick O'Neal
Albert Shanker
Edward T. Hanley
J. C. Turner
Alvin E. Heaps
John DeConcini
Joyce D. Miller
James E. Hatfield
Vincent R. Sombrotto
Marvin J. Boede
Owen Bieber

JUN 7 1984

June 4, 1984

The Honorable Charles E. Grassley
United States Senate
135 Hart Building
Washington, D.C.

Dear Senator Grassley:

What follows is my response to the questions concerning the AFL-CIO's position on S. 462 (which would amend the Hobbs Act) attached to your May 23, 1984 letter addressed to me. I have numbered each of your questions, set that question out in quotation marks and stated my response seriatum.

"1. The federal extortion law, the Hobbs Act, applies to nearly everyone, does it not?"

The Hobbs Act applies to everyone who commits an act of robbery or extortion as that Act defines those terms that "in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce."

"2. That is, there are no statutory exemptions in the law?"

So far as I am aware, the Act's limits are those stated in my answer to question 1.

"3. But there is a court-created exemption for union members pursuing "legitimate union objectives" by whatever means, is there not?"

There is no "court-created exemption for union members" of any kind. The Supreme Court's Enmons decision is a construction of the literal language of 18 U.S.C. §1951(b)(2), which defines extortion, and most particularly the phrase "wrongful use of actual or threatened force, violence or fear ..." (emphasis added) that accords with the congressional intent underlying the Hobbs Act as revealed by that Act's legislative history.

"4. Is there any other exemption in that law?"

See my answer to questions 1 to 3.

"5. Why should a man who threatens a physical injury or serious property damage to another be exempt from the federal law because he carries a union card?"

This question rests on the erroneous premise that a "man who ... carries a union card" is exempt from federal law.

"6. What about givebacks? Is not this a situation in which an employer's use of violence in a strike could be found to have the objective of extorting a union member's property?"

So far as I am aware, there has never been a Hobbs Act prosecution against an employer for his collective bargaining tactics on any theory much less on the theory that the use of force to secure a giveback is a "wrongful" use of force.

"7. You stated that extortionate violence by union members is currently subject to state law. Are you aware, Mr. Gold, that Enmons-type exemptions, for extortionate violence by union members, currently exist in the laws of a number of States?"

In my testimony, I stated that the use of force by union members during a bona fide labor dispute is and should be subject to such state laws as assault, destruction of property, etc., I did not state that such wrongdoing is or should be considered extortion.

"8. You stated that strike-related violence occurs rarely and that the burden is on the proponents of S. 462 to show the existence of a problem. Now, I have examined at least 15 violent incidents in as many different States. Each occurred recently, and most could make a case for extortion. How much proof of a problem do you need?

Given the complete lack of any specifics in your question, I have no basis for evaluating your conclusion that those incidents "could make a case for extortion".

"9. Mr. Gold, I've cited you 15 cases of strike-related violence that I am aware of. Most could make out a case for extortion. Can you tell me how many state prosecutions for extortion have been brought in recent years against union officials since the states are handling the problem adequately in your view?"

See my answer to question 8.

"10. If state and local governments are not intimidated from pursuing these cases — if they are willing to prosecute extortion by union officials — why have they not done so in these cases?"

In the attachments to the AFL-CIO's December 10, 1981 testimony we showed that where the facts have warranted prosecution for wrongdoing during a labor dispute, state and local officials have not hesitated to prosecute.

"11. You also state in materials submitted at the last hearing that the FBI does not keep statistics on strike related violence, and implied that lack of FBI data was proof that such violence hardly occurs. Are you aware that the Bureau of Alcohol, Tobacco and Firearms does keep such statistics, at least with regard to arsons and explosives?"

The Bureau of Alcohol, Tobacco and Firearms' statistics to which you refer, and which are discussed in my testimony, concern "labor related" arson and explosives use, a far more general category than your paraphrase "strike related incidents" and a BAFT spokesperson has made it plain that:

> The category of Labor Related Incidents listed in Tables 9, 10 and 27 of the Annual Report of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, entitled 'Explosives Incidents 1980' includes in that category incidents which could have been perpetrated by members of labor or management or others attempting to embarrass either group. The statistics are not based on convictions or indictments but rather on incidents as reported and an analysis of such incidents by ATF staff. We believe the Reader's Digest article of August, 1981, entitled 'We'll Get Those Scabs', quoting ATF statistics is inaccurate. For purposes of explosives related statistics, we do not have a category entitled political terrorism or one of union violence nor were we the source of any of the allegations contained in that article.

"12. Do you know of such cases where employers committed the arson bombings to frame the union; and, if so, please tell us how many of those BATF cases included an employer framing the union?"

Employers who commit "arson bombings to frame the union" do not have the habit of confiding their wrongdoing to the AFL-CIO.

"13. In the Great Coastal Express case where the employers were found to have committed arson to frame the Teamsters Union, the employers were subsequently convicted of perjury, were they not?"

Yes, and it bears emphasis that those employees were not convicted of extortion nor would S. 462 provide the basis for a federal prosecution of those employers.

"14. Are there any other cases listed in the BATF arson and bombing statistics in the "labor related" category that represent similar "framing" of the union?"

I do not have any information concerning the specifics of the incidents underlying the BATF statistics nor do I believe that such specifics are available.

"15. The BATF has a high threshold on arson and incendiary bombings before it will become involved to investigate a violation of 18 U.S.C. 844, does it not?

That is, only certain types of accelerants will trigger federal jurisdiction so the actual number of "labor related" arsons and bombings may be much higher than those listed by BATF, is that not correct?"

I do not know what the term "high threshold" means. I presume that the BATF has selected an appropriate threshold for enforcing 18 U.S.C. §844 given its resources and its recognition that in our federal system there are also state and local law enforcement authorities and that the latter are highly competent and do have the primary peacekeeping responsibility.

"16. In a recent case in Lexington, Kentucky, an unscrupulous businessman and a labor union worked together to put non-union competition out of business by means of arson and under the Enmons legitimate union objectives loophole. Does the AFL-CIO approve of violent tactics to put non-union competitors of unionized companies out of business? If the AFL-CIO does not approve of violence, please tell us what steps have been taken to discipline errant unions or union officials who have used the violence disclosed in the Edgar Jones case and in the cases disclosed to the Judiciary Committee in these hearings?"

From your question, which again lacks specifics, I cannot make a judgment as to whether the incident you refer to comes within the Hobbs Act or not. As you well know, the AFL-CIO does not approve of the use of violence and as I think you are well aware, the AFL-CIO has the same disciplinary capacity over "errant unions," assuming there are any, as the Chamber of Commerce, the National Association of Manufacturers and the Right To Work Committee have over Great Coastal Express or the "unscrupulous businessman" in Lexington, Kentucky to whom you refer.

"17. Does the AFL-CIO seek to extend the Enmons rationale to other criminal laws as well as the Teamsters Union did in the case of United States v. Thordarson?"

The AFL-CIO believes that the Enmons rationale is soundly based on congressional intent and should apply to the full extent that Congress intended.

Sincerely,

Laurence Gold
Special Counsel

APPENDIX

Part 1.—Additional Statements and Views

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

STROM THURMOND, S.C., CHAIRMAN

CHARLES McC. MATHIAS, Jr., MD.
PAUL LAXALT, NEV.
ORRIN G. HATCH, UTAH
ROBERT DOLE, KANS.
ALAN K. SIMPSON, WYO.
JOHN P. EAST, N.C.
CHARLES E. GRASSLEY, IOWA
JEREMIAH DENTON, ALA.
ARLEN SPECTER, PA.

JOSEPH R. BIDEN, Jr., DEL.
EDWARD M. KENNEDY, MASS.
ROBERT C. BYRD, W. VA.
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZ.
PATRICK J. LEAHY, VT.
MAX BAUCUS, MONT.
HOWELL HEFLIN, ALA.

VINTON DeVANE LIDE, CHIEF COUNSEL AND STAFF DIRECTOR
DEBORAH K. OWEN, GENERAL COUNSEL
DEBORAH G. BERNSTEIN, CHIEF CLERK
MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE
AND PROCEDURE

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

PAUL LAXALT, NEV.
ARLEN SPECTER, PA.

HOWELL HEFLIN, ALA.
MAX BAUCUS, MONT.

LYNDA L. NERSESIAN, CHIEF COUNSEL AND STAFF DIRECTOR
ALICE R. MILDER, GENERAL COUNSEL

25 October 1983

MEMORANDUM:

TO: Senator Grassley (DRAFT FORM)

FRM: Terry T. Campo, Counsel

RE: State Extortion Laws With Union Exemptions

Our brief investigation reveals that at least a dozen states either exempt violent activities by labor unions from their extortion laws, or restrict the use of the state police or national gaurd in strike-violence cases. These state laws appear to take three approaches to safegaurding union violence from prosecution.

Extortion:

Extortion is generally defined as obtaining a person's property with their consent, but with that consent having been obtained by the wronfull use of force or violence, or threats of same. The Supreme Court's ruling in United States v. Enmons, 410 U.S. 396 (1973), essentially held that if the purpose of the violence was a "legitimate union objective" it was not "wrongful," and therefore, did not constitute extortion under the federal Hobbs Act, 28 U.S.C. 1951.

The Hobbs Act itself was a Congressional response to a prior Supreme Court decision, United States v. Local 807, International Brotherhood of Teamsters, 315 U.S. 521 (1942), which held that the "wage clause" of the Anti-Racketeering Act of 1934, 48 Stat. 979 (1934), forbade federal extortion prosecution when the coerced payment took the form of wages. In the Enmons case, the Supreme Court read Congress's revulsion at the Local 807 ruling and its chage of the racketeering statute as nothing more than a reversal of the specific "wage clause" exemption. The Court, therefore, created the legitimate union objectives rationale to exclude violent conduct by labor unions from the law.

Most of the states which exempt union violence from the extortion law take the broader "wage clause" approach, while others adopt the Enmons "legitimate union objectives" exemption. New York goes even further, containing in its statutory definition of extortion both a "wage clause" and an Enmons-type "legitimate union objectives" exemption. See: N. Y. Penal Law, Sect. 155.05 (2)(e)(iv).

Our investigation thusfar reveals virtually no prosecutions by state officials where unions are not specifically exempted.

(I) "Wage Clause" Jurisdictions.

In the Mungovan situation, federal authorities were the natural place for C & W Construction to turn not only because of the strong union dominance of the state's political authorities, but also because Hawaii's state extortion law contains an express "wage clause" exemption for union extortion. Specifically, the crime of extortion is defined as a person doing the following: /1

> Otains, or exerts control over, the property or services of another with the intent to deprive him of the property or services by threatening by word or conduct to....Bring about or continue a strike, boycott, or similar collective action, to obtain property *which is not demanded or recieved for the benefit of the group which the defendant purports to represent*...

Hawaii thereby exempts from this section violent conduct which is part of "collective group action" which is sought "for the benefit of the group" that the perpetrater(s) "*purport* to represent." While a prior provision generally encompasses violence and the threat of violence, a union official accused of extortion would likley plead that the charge should be brought under this more specific section, which, arguendo, the legislature specifically chose to exempt him from.

In addition to Hawaii, we have discovered ten other states with "wage clause" type exemptions. These include Alaska, Arkansas, Georgia, Idaho, Connecticut, Nebraska, Oregon, Utah, Washington, and New York. /2

(II) "Legitimate Union Objecties" or "Wrongfulness" Jurisdictions.

We have been contacted by several people with stories of violent attacks on their persons or property in two of the three states which we have discovered statutory *Emmons*-type exemptions. Maryland specifically excludes from its extortion definition "legitimate efforts by employees or their representatives to obtain certain wages, hours, or working conditions." /3

California's extortion definition is nearly identical to the Hobbs Act as construed by the Supreme Court in *Emmons*, containg the requisite "wrongful use of force" that the *Emmons* court ruled was not met by a legitimate union objective. /4

New York, as noted previously, similarly requires a "wrongful taking" to constitute extortion under its laws. /5

Still another jursidiction's courts have read an *Emmons* exemption into their state extortion law. Tennessee's Court of Appeals specifically adopted the Emmons rationale by construing the defendant union officer's actions outside the scope of the legitimate union objectives exemption. Had the union officer's activity been "legitimate" rather than a personal objective, he would likely have escaped prosecution. /6

1/ Md. Crim. Law Code Ann., Art. 27, Sect. 562B.

2/ Alaska Stat., Sect. 11.41.520; Ark. Stat. Ann., Sect. 41-2201(9)(h); Ga. Code Ann., Sect. 16-8-16(a)(5); Idaho Code, Sect. 18-2403(e)(6); Conn. Gen. Stat., Sect. 53a-119(5)(F); Neb. Rev. Stat., Sect. 28-513(1)(e); Or. Rev. Stat., Sect. 164.075(1)(f); Utah Code Ann., Sect. 76-6-406(2)(h); Wash. Rev. Code, Sect. 9A 04.110; N.Y. Penal Law, Sect. 155,05(2)(e).

As a result of state codification of the Supreme Court's *Local 807* and *Emmons* decisions, citizens of fourteen states may be threatened with personal injury or property damage as part of a labor-management dispute, and if the perpetrator was a union agent who "purports to represent" the group, no state action can be taken. Nor can any federal action be taken nationwide.

(III) Restrictions on the Police and National Gaurd in Strike-Violence.

At least four states severely restrict the power of state police or the National Gaurd in strike-related violence. Montana, where several violent incidents have occurred in the past year and local authorities are both highly sensitive to union pressure and understaffed, expressly forbids its state police to make arrests in labor disputes "or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts." /7

Alaska, which similarly exempts unions from the extortion laws, provides that "In no case may any part of the Alaska National Gaurd...or the state militia be used against any labor organization...". /8 Massachusetts /9 and Indiana allow the use of the state police only upon the express approval of the Governor, its most politically sensitive official. /10

(IV) Restrictions on the State Attorneys General Powers.

While a comprehensive review of the powers of each state's Attorney General, like the foregoing analysis, is beyond us at this time, it appears that fewer than a half-dozen state Attorneys General possess the power to initiate a criminal prosecution when the local prosecutor fails to act because of political reasons.

As time permits, we will give more comprehensive review to each state law as it effects these areas. It can be fairly concluded, however, that almost all union violence escapes meaningful prosectution. Both myself and our law clerk attempted to find cases where a union official was prosecuted for acts of violence on both Lexis and Westlaw computers. Only the Tennessee case and several New York cases where personal pay-offs, rather than "legitimate union objectives" were discovered. I think it is fair to conclude that if a conviction for extortion had been obained, the union official would have appealed, in which case it should have been discovered by our computer search.

3/ Md. Crim. Law Code Ann., Sect. 562B.

4/ Cal. Penal Code, Sect. 518.

5/ N. Y. Penal Law, Sect. 155.05(2)(e).

6/ *Moore v. Tennessee*, 519 S.W.2d 604 (C.A. Tenn. 1974), *cert. den.* 519 S.W.2d 604 (S.C. Tenn. 1975).

7/ Mont. Rev. Codes Ann., Sect. 31-110.

8/ Alaska Stat., Sect. 26.05.340.

9/ Mass. Ann. Laws, Ch. 22, Sect. 9A.

10/ Ind. Code, Sect. 10-1-1-10.

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

STROM THURMOND, S.C., CHAIRMAN
CHARLES McC. MATHIAS, JR., MD.
PAUL LAXALT, NEV.
ORRIN G. HATCH, UTAH
ROBERT DOLE, KANS.
ALAN K. SIMPSON, WYO.
JOHN P. EAST, N.C.
CHARLES E. GRASSLEY, IOWA
JEREMIAH DENTON, ALA.
ARLEN SPECTER, PA.
JOSEPH R. BIDEN, JR., DEL.
EDWARD M. KENNEDY, MASS.
ROBERT C. BYRD, W. VA.
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZ.
PATRICK J. LEAHY, VT.
MAX BAUCUS, MONT.
HOWELL HEFLIN, ALA.

VINTON DeVANE LIDE, CHIEF COUNSEL AND STAFF DIRECTOR
DEBORAH K. OWEN, GENERAL COUNSEL
DEBORAH G. BERNSTEIN, CHIEF CLERK
MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE
CHARLES E. GRASSLEY, IOWA, CHAIRMAN
PAUL LAXALT, NEV.
ARLEN SPECTER, PA.
HOWELL HEFLIN, ALA.
MAX BAUCUS, MONT.
[illegible] CHIEF COUNSEL AND STAFF DIRECTOR
[illegible], GENERAL COUNSEL

8 June 1984

M E M O R A N D U M:

TO: Senator Grassley

FRM: Terry T. Campo
Counsel

RE: Recent Hobbs Act Decision, United States v. Edgar Jones, et al.

Attached is an update on the Hobbs Act convictions obtained in United States v. Edgar Jones, et al. (Case No. 83-8 E.D. Kentucky) on 11 April 1984. Not all of the twenty defendants were convicted of violating the Hobbs Act, 18 U.S.C. 1851, or the use of incindiary explosives, 18 U.S.C. 844(i). Those that were convicted recieved a sentence of three years incarceration on each count.

The most interesting aspect of this case was the court's ruling that the conspiracy between the union and a unionized employer to commit acts of arson and extortion against non-union competitors of the employer did not constitute a "legitimate union objective" under Enmons. Had the court found that putting the non-union companies out-of-business was a "legitimate" objective, the violent acts would not be punishable under the Hobbs Act. Though it is not clear from the court's records, it appears the key element which removed these acts from the protection of the Enmons loophole was the conspiracy with the unionized employer, i.e., had the union officers not acted in concert with the employer and instead acted of their own volition, Enmons would have applied.

Among the overt acts proven in this case was a conspiracy in which Edgar Jones, president of the unionized JRM Coal Company, Inc. met with the president of the United Mine Workers of America District 30 Council because the non-union Ray Mac Coal Co. had underbid JRM on a 1982 contract. District 30 and UMWA Local 5967 then attempted to organize, or shut-down, Ray Mac begining almost immediately.

Gunshots were fired at the personnell and equipment of Ray Mac the following day, and when the Kentucky State Police attempted to restore order, union organizers opened fire on the police with rifles and handguns. Not only were union officers involved in the violence, the president of Local 5967 was one of those who shot at the personnell and equipment or Ray Mac Coal. In addition, the union president drew a check for $3000 on UMWA Local 5967 which was used for the purchase of guns and ammunition from a local sporting goods store. Evidence also indicates that JRM Coal and its president, Edgar Jones, provided guns, ammunition, money, and wiskey for the union picketers.

Dynamite and blasting caps were also used to destroy a coal auger and bulldozer of Ray Mac in violation of 18 U.S.C. 844(i).

While notice of appeal has not yet been filed to our knowledge, this probably will be done. On appeal, it is possible that the Hobbs Act convictions may be overturned if the court holds putting the non-union competitiors of the unionized company to be a permissalbe objective. As indicated earlier, it appears that it was the conspiracy with the unionized company, instead of the union acting on its own volition, that took this case outside the protection of Enmons. Should the Hobbs Act convictions be overturned by the Court of Appeals, only the charges involving the dynamite and blasting caps would remain. The gunshots fired at Ray Mac's personnell and equipment, and at the State Police, would go unpunished.

It should be noted, however, that at least one U.S. District Court has fasioned a legitimate union objectives exeption to the explosive statute as well. United States v. Thordarson, 487 F. Supp. 991 (C.D. Cal. 1980). While this ruling was overturned on appeal, the 9th Circuit's holding is not binding in this case. See: United States v. Thordarson, 646 F.2d 1323 (9th Cir. 1981), cert. den., 454 U.S. 1055 (1981).

United States District Court
Eastern District of Kentucky
Office of the Clerk

Leslie G. Whitmer
Clerk

Manford R. Hughes
Chief Deputy Clerk

Please Reply to:
( ) P.O. Box 741
Lexington, KY 40586
( ) P.O. Box 355
Catlettsburg, KY 41129
☐ P.O. Box 1073
Covington, KY 41012
( ) P.O. Box 608
London, KY 40741
XX P.O. Box 1139
Pikeville, KY 41501

June 7, 1984

Ms. Veronica Gonzalez
Room SD-248
Judiciary Committee
United States Senate
Washington, D. C. 20510

Re: Pike Criminal 83-8 - United States of America
vs: Edgar Jones, Et Al

Dear Ms. Gonzalez:

Pursuant to your request, please find enclosed the Judgment and Commitment Orders and Indictment in the above styled case.

Very truly yours,

LESLIE G. WHITMER, CLERK

By: Malinda C Reeves
Deputy Clerk

Enclosures

United States District Court for
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DEFENDANT EDGAR JONES

DOCKET NO. 83-8-1

[illegible] ****************** [illegible] ****************

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR May 25, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Aubrey Harwell, Albert Moore, Jerry Patton
(Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a XXXX verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY. to Counts 1, 4

Defendant has been convicted as charged of the offense(s) of conspiracy to obstruct delay and affect commerce, and the movement of articles and commodities in commerce, by extortion, as defined in Section 1951 of Title 18; aiding and abetting in the obstruction, delaying and affecting commerce and athe movement of articles and commodities in commerce, by extortion, in violation of Title 18, Section 1951, of the United States Code; and Section 2.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. [illegible] to the court, the court adjudged the defendant guilty as charged and convicted and ordered that [illegible] hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

THREE YEARS on Count 1, and THREE YEARS on Count 4, to be served consecutively. Execution of the sentence imposed upon Count 4 is hereby SUSPENDED, and the defendant is placed on probation for a period of Two Years. The probation period is to be consecutive to the sentence imposed upon Count One, to begin on release from custody. This sentence is imposed pursuant to provisions of Title 18, Section 4205(a) of United States Code.

SPECIAL CONDITIONS OF PROBATION

A Presentence report was submitted to the Court prior to the Court prior to imposition of sentence with copies furnished to counsel pursuant to Rule 32, of Federal Rules of Criminal Procedure.

The Court finds that the Victim Witness Protection Act's provisions for restitution do not apply in this case.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

that the defendant NOT BE INCARCERATED in the same institution in which any of the following defendants are now imprisoned: Pearl Booth; Phillip Booth; Phillip Dale Moore; Van B. Patton; Basil Ray Moore or Jake Moore.; Philman Caudill;.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. WIX UNTHANK, JUDGE

Date May 29 ,1984

copies U.S. atty
[illegible]
U.S. Probation

Eastern District of Kentucky
FILED
MAY 2 9 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

United States District Court for

of America vs.

JASON MOORE

EASTERN D..TRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. ➤ 83-8-2

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date ➤ MONTH DAY YEAR April 11, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Honorable William D. Kirkland
(Name of counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY.

To Counts 1, 2, 3

There being a XXXX verdict of ☒ NOT GUILTY/ Defendant is discharged, and exonerated from bond
☐ GUILTY.

50

Defendant has been convicted as charged of the offense(s) of

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
APR 12 1984
DB 107
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

BY
U.S. District Judge
U.S. Magistrate

➤ G. Wix Unthank
G. WIX UNTHANK, JUDGE Date April 12, 1984

U.S. atty
William Kirkland

s of America vs. **United States District Court** for

NT GERMAN STUMBO

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. ▶ L83-8-3

JUDGMENT AND PROBATION/COMMITMENT ORDER

EL In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR May 25, 1984

52

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL William D. Kirkland
(Name of counsel)

A ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

NG & MENT There being a ~~xxxx~~/verdict of ☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. to Counts 1, 4 and 8.

Defendant has been convicted as charged of the offense(s) of Conspiracy to obstruct, delay and affect commerce, and movement of articles, etc. in commerce, by extortion; knowingly obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by extortion; maliciously damage and destroy and attempt to damage and destroy by means of explosives, a Salem coal auger and bulldozer, being used for mining of coal for shipment in interstate commerce in violation of Title 18, Sections 1951, and 844(i)

TENCE OR BATION RDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

THREE (3) YEARS on Count 1; THREE(3) YEARS on Count 4;EIGHTEEN (18) MONTHS on Count 8, under provisions of Title 18:4205(a). The sentence imposed upon Count 4 to be served consecutively to the sentence imposed upon Count 1 and concurrently to the sentence imposed upon Count 4. The sentence imposed upon Counts 4 and 8 are SUSPENDED and the defendant shall be placed upon probation for a period of TWO YEARS to begin upon release from confinement. EXECUTION of the foregoing sentence is STAYED to June 25, 1984, at which time the defendant shall surrender to the United States Marshal in Lexington, Kentucky no later than 1:00 P.M. The defendant is allowed to continue on bond until date of surrender. A presentence report was submitted to the Court prior to the imposition of sentence with copies furnished to counsel pursuant to Rule 32. The Court finds that the Victim Witness Protection Act's provisions for restitution do not apply in this case.

PECIAL NDITIONS OF OBATION

DDITIONAL ONDITIONS OF PROBATION In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION The court orders commitment to the custody of the Attorney General and recommends, that the defendant NOT be incarcerated in the same Federal Correctional Institution in which any of the following defendants are now imprisoned Pearl Booth; Phillip Booth; Phillip Dale Moore; Van B. Patton; Basil Ray Moore; Jake Moore; Philman Caudill

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
5 1984
OB109
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. WIX UNTHANK

Date May 29, 1984

Rec'd: USM. Mine Y 2 Whites Attyst.

525

1.

. of America vs. **United States District Court** for

T DREXIL HALL EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 83-8-4

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR April 9, 1984

L ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Bernard Pafunda (Name of counsel) 479

A ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a [illegible]/verdict of ☒ NOT GUILTY/ to Count One, Defendant is discharged and exonerated from bond.
☐ GUILTY.

NG & MENT Defendant has been convicted as charged of the offense(s) of

TENCE OR BATION RDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SPECIAL NDITIONS OF ROBATION

DDITIONAL ONDITIONS OF PROBATION In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
APR 10 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

UNTHANK, JUDGE Date April 9, 1984

479

526

United States District Court

TEDDY KINNEY

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. → 83-8-5

************ [illegible] ******************

In the presence of the attorney for the government the defendant appeared in person on this date → May 25, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL William D. Kirkland
(Name of Counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a XXXX verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY. to Counts 1, and 4.

Defendant has been convicted as charged of the offense(s) of Conspiracy to obstruct, delay and affect commerce, and the movement of articles,etc. in commerce, by extortion; knowingly obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by extortion, in violation of Title 18, Section 1951, of the United States Code.

ENTENCE OF ROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

THREE YEARS on Count 1, and **THREE YEARS** on Count 4, to be served consecutively, under the provisions of Title 18, 4205(a). The sentence imposed upon Count 4 is hereby **SUSPENDED** and the defendant is placed on probation for a period of **TWO YEARS**. The probation of the defendant is to be consecutive to the sentence imposed on Count 1 and to begin on release from custody. Execution of the sentence heretofore imposed is hereby **STAYED** to June 25, 1984, at which time the defendant shall surrender to the United States Marshal at Lexington Kentucky not later than 1:00 P. M. The defendant is allowed to remain on bond until date of surrender.

SPECIAL CONDITIONS OF PROBATION

A presentence report was submitted to the Court prior to the imposition of sentence with copies furnished to counsel pursuant to Rule 32.F.R.Cr

The Court finds that the victim witness protection act's provisions for restitution do not apply in this case.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends that the defendant **NOT** be incarcerated in the same Federal Correctional Institution in which any of the following defendants are now imprisoned: Pearl Booth; Phillip Booth; Phillip Dale Moore; Van B. Patton; Basil Ray Moore, or Jake Moore.; Philman Caudill.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
MAY 29 1984
0B 105
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. Wix Unthank
G. WIX UNTHANK, JUDGE

Date May 29, 1984

[illegible]

52

America vs.

United States District Court for

BENNY CAUDILL

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 83-8-6

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR April 11, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Honorable E. J. Walbourn, III
(Name of counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

to Counts 1, 2

There being a XXXX/verdict of
☒ NOT GUILTY/Defendant is discharged and exonerated from bon
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of

…& …NT

501

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

…ENCE
…R
…ATION
…DER

Eastern District of Kentucky
FILED
APR 12 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

…ECIAL
…DITIONS
OF
…BATION

…DITIONAL
…NDITIONS
OF
…ROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

…OMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge

Date April 12, 1984

501

United States of America v.

United States District Court

DEFENDANT KENNETH ROWLAND a/k/a POSTMAN

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 83-8-7

[illegible]

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date: May 25, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL William D. Kirkland
(Name of Counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a XXX verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY. to Counts 1 and 4.

Defendant has been convicted as charged of the offense(s) of conspiring to obstruct, delay, and affect commerce, and the movement of articles, etc. in commerce, by extortion; knowingly obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by extortion, in violation of Title 18, Section 1951, of the United States Code.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of:

THREE YEARS on Count 1, and THREE YEARS on Count 4, to be served consecutively, under the provisions of Title 18, Section 4205(a) of the United States Code. Execution of sentence on Count 4 is SUSPENDED , and the defendant placed on probation for TWO YEARS. The period of probation is to be consecutive to the sentence imposed upon Count 1,and is to begin on release from custody. Execution of the heretofore sentence imposed is STAYED to June 25, 1984, at which time the defendant shall surrender to the United States Marshal at Lexington, Kentucky not later than 1:00 P. M. The defendant is allowed to continue on bond, until the date of surrender.

SPECIAL CONDITIONS OF PROBATION

A presentence report was submitted to the Court prior to imposition of sentence with copies furnished to counsel pursuant to Rule 32.

The Court finds that the Victim Witness Protection Act's provisions for restitution do not apply in this case.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

that the defendant NOT be incarcerated in the same Federal Correcitonal Institution in which any of the following defendants are now imprisoned; Phillip Booth, Pearl Booth, Phillip Dale Moore, Van B.. Patton; Basil Ray Moore or Jake Moore., Philman Caudill.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
MAY 29 1984
OB 109
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U.S. DISTRICT COURT

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. WIX UNTHANK, JUDGE

Date May 29, 1984

copies: USM - pink + 3 white attest.
5.29.84 U.S. Atty U.S. Probation Ofc

.52

d America vs.

United States District Court for

RANNY BLANKENSHIP

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. ➤ 83-8-8

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date ➤ MONTH DAY YEAR April 11, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Honorable Eldred E. Adams, Jr.
(Name of counsel)

3

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,   ☐ NOLO CONTENDERE,   ☐ NOT GUILTY

to Counts 1,3

There being a ~~finding~~/verdict of
☒ NOT GUILTY. Defendant is discharged and exonerated from bond.
☐ GUILTY.

G &
ENT

Defendant has been convicted as charged of the offense(s) of

ENCE
OR
BATION
RDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Eastern District of Kentucky
FILED
APR 12 1984
OB107
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

PECIAL
DITIONS
OF
OBATION

DITIONAL
NDITIONS
OF
OBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

OMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
X U.S. District Judge

[illegible] JUDGE Date April 12, 1984

50

1

of America vs.

United States District Court for

EUGENE TACKETT

EASTER. DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. ➤ 83-8-9

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (5/78)

In the presence of the attorney for the government the defendant appeared in person on this date ➤ MONTH DAY YEAR April 11, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL HONORABLE DAVID W. THOMAS
(Name of counsel)

50

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,
☐ NOLO CONTENDERE,
☐ NOT GUILTY

to Counts 1, 3

There being a XXXX/verdict of
☒ NOT GUILTY/ Defendant is discharged and exonerated from bond.
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of

G &
ENT

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

TENCE
OR
JATION
IDER

PECIAL
IDITIONS
OF
OBATION

IDITIONAL
INDITIONS
OF
ROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

OMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
APR 12 1984
DB 107
AT PIKEVILLE
LESLIE G. WHITMER
CLERK U.S. DISTRICT COURT

5C

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

SIGNATURE JUDGE, Date April 12, 1984

of America vs.

HAROLD MOORE

United States District Court for

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. ▶ 83-8-10

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date ▶ MONTH DAY YEAR April 11, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Honorable E. J. Walbourn, III
(Name of counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

to Counts 1, 3

There being a verdict of ☒ NOT GUILTY. Defendant is discharged and exonerated from bond.
☐ GUILTY.

NG &
AENT

Defendant has been convicted as charged of the offense(s) of

TENCE
OR
BATION
RDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

PECIAL
NDITIONS
OF
OBATION

DDITIONAL
ONDITIONS
OF
ROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. Wix Unthank
G. WIX UNTHANK, JUDGE Date April 12, 1984

Eastern District of Kentucky
FILED
APR 12 1984
DB
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

504

s of America vs. **United States District Court** for

IT └ HERMIT NEWSONE ┘ └ EASTERN DISTRICT OF KENTUCKY PIKEVILLE ┘

DOCKET NO. ► └ 83-8-11 ┘

JUDGMENT AND PROBATION/COMMITMENT ORDER

52

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR April 11,1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL └ Honorable B. J. Walbourn,III ┘ (Name of counsel)

A ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a ~~XXXXX~~/verdict of ☒ NOT GUILTY/ to Counts 1, 2 Defendant is discharged and exonerated from bond.

☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of

NG & MENT

TENCE OR BATION RDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SPECIAL NDITIONS OF OBATION

DDITIONAL ONDITIONS OF ROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
APR 12 1984
03107
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. WIX UNTHANK,JUDGE Date April 12 ,1984

505

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

TIM MILAN

DOCKET NO. 83-8-12

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR April 11, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL HONORABLE DAN ROWLAND (Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,
☐ NOLO CONTENDERE,
☐ NOT GUILTY

FINDING & JUDGMENT

There being a xxxx verdict of

To Counts 1, 3

☒ NOT GUILTY. Defendant is discharged and exonerated from bo

☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

OMMITMENT ECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
APR 12 1984
00107
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

NED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. Wix Unthank
G. WIX UNTHANK, JUDGE Date April 12, 1984

cpies: U.S atty
Dan Rowland
U.S Marshal
U.S Probation 4-12-84 BE

506

United States District
EASTERN DISTRICT OF KE
PIKEV[illegible]

5

DEFENDANT MOSE MEAD

[illegible] 83-8-13

[illegible]

In the presence of the attorney for the government the defendant appeared in person on this date May 25, 1984

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL E. J. WALBOURN, III
(Name of Counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~ XXXX verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY. to Counts 1, 4, and 5.

Defendant has been convicted as charged of the offense(s) of conspiring to obstruct, delay and affect commerce and the movement of articles and commodities in such commerce by extortion; knowingly obstruct, delay and affect commerce and did attempt to obstruct, delay and affect commerce, and the movement of articles and commodities in such commerce, by extortion, in violation of Title 18, Section 1951, of the United States Code.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

THREE YEARS on Count 1; THREE YEARS on Count 4; THREE YEARS on Count 5, under the provisions of Title 18, 4205A. The sentence imposed upon Count 4 is consecutive to the sentence imposed upon Count 1. The sentence imposed upon Count 5 is to be served consecutive to the sentmce imposed upon Count 1 and concurrent to the sentence imposed upon Count 4. The sentences imposed upon Counts 4 and 5 are hereby SUSPENDED AND THE defendant to be placed upon probation for a period of TWO YEARS, to begi upon release of confinement. Execution of the foregoing sentence is STAYED TO July 16, 1984, at whichtime the defendant shall surrender to the United States Marshal at Lexington, Kentucky not later than 1:00 P.M The defendant is allowed to remain on bond until the date of surrendor. A presentence report was submitted to the Court prior to the imposition of sentence with copies furnished to counsel. The Court finds that the provisions of the Victim Witness Protection Act as to restitution dc not apply in this case.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

that the defendant NOT be incarcerated in the same Federal Correctional Institution in which any of the following defendants are now in imprisoned; Pearl Booth; Phillip Booth; Phillip Dale Moore; Van B. Patton; Basil Ray Moore; Jake Moore; or Philman Caudill.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. WIX UNTHANK, JUDGE Date May 29, 1984

Eastern District of Kentucky
FILED
MAY 29 1984
OB 109
AT PIKEVILLE
LESLIE G. WHITMER
CLERK U.S. DISTRICT COURT

copies: 5-29-84 ho { U.S. Marshal pris + 2 copies attest; U.S. Atty; E. J. Walbourn III; U.S. Pro[illegible] [illegible]

528

United States of America vs.

United States District Court for

DONAHUE HALBEI

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 83-8-14

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR: April 7, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Hershel Branson, Jr.
(Name of counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a ~~finding~~/verdict of ☒ NOT GUILTY/ to Count One Defendant is discharged and exonerated from bond.
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

47

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
APR 09 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

District Judge
Magistrate

G. WIX UNTHANK, JUDGE Date April, 9 1984

U.S. Atty U.S. Marshal Hershel Branson, Jr. U.S. Probation 4-11-84

472

United States District Court

DEFENDANT AUSTIN "BO" MOORE

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 83-8-15

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR April 11, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Honorable Bernard Pafunda
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

NDING & UDGMENT

There being a ~~finding~~/verdict of ☒ NOT GUILTY. Defendant is discharged and exonerated from bond. to Counts 1, 2
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of

TENCE OR BATION IDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

ECIAL DITIONS OF BATION

IONAL ITIONS ATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

IMENT IMMEN ION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

LY
S. District Judge
Magistrate

G. WIX UNTHANK, JUDGE Date April 12, 1984

Eastern District of Kentucky
FILED
APR 12 1984
06107
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U.S. DISTRICT COURT

U.S. Atty
Bernard Pafunda
U.S. Marshal
U.S. Probation
4-12-84 BG

58

United States District Court

DEFENDANT [illegible]

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 83-8-16

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR April 11, 1984

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL HONORABLE TOM HOLLON (Name of counsel)

P

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

to Counts 1, 2, 3

There being a XXXX/verdict of ☒ NOT GUILTY. Defendant is discharged and exonerated from bond.
☐ GUILTY.

DING & UDGMENT

Defendant has been convicted as charged of the offense(s) of

TENCE OR LATION DER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Eastern District of Kentucky
FILED
APR 12 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

CIAL ITIONS OF ATION

IONAL TIONS TION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

MENT MEN ON

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

District Judge
Magistrate

G. Wix Unthank

G. WIX UNTHANK, JUDGE Date April 12, 1984

U.S. atty
Tom Hollon
U.S. Marshal
U.S. Probation 4-12-84 SG

508

United States District Court for

LINVILLE NOBLE

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 83-8-17

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
April 7, 1984		

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Lowell Ed Spencer
(Name of counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a ~~finding~~/verdict of ☒ NOT GUILTY/ to Counts 1 and 2 Defendant is discharged, and exonerated from bond.
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
APR 09 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U.S. DISTRICT COURT

District Judge
Magistrate

G. WIX UNTHANK, JUDGE Date April 9, 1984

U.S. Atty
U.S. Marshal U.S. Probation
L. Ed Spencer 4-11-84 bc

ited States of America vs.

United States District Court for

DEFENDANT RAYMOND HALL

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 83-8-18

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR April 11, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Honorable William D. Kirkland
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,
☐ NOLO CONTENDERE,
☐ NOT GUILTY

IDING & UGMENT

There being a [illegible]/verdict of
☒ NOT GUILTY. to Counts 1, 2, 4 Defendant is discharged and exonerated from bond.
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of

TENCE OR ATION IDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Eastern District of Kentucky
FILED
APR 12 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

DB107

CIAL ITIONS OF ATION

IONAL TIONS TION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

MENT MEN ON

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

50

District Judge
Magistrate G Wix Unthank

G. WIX UNTHANK, JUDGE Date April 12, 1984

U.S. atty
Wm Kirkland

[illegible] PATTON EASTERN DISTRICT OF KENTUCKY

DOCKET NO. ▶ 83-8-20 PIKEVILLE

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (8/74)

In the presence of the attorney for the government the defendant appeared in person on this date ⟶

MONTH	DAY	YEAR
May 4, 1984		

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Eldon Webb, Federal Public Defender
(Name of counsel)

Eastern District of Kentucky
FILED
MAY 0 8 1984
06/09
AT PIKEVILLE
CHARLIE G. WHITAKER
CLERK, U.S. DISTRICT COURT

☒ GUILTY, to Count 7 and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully carry firearms, as defined by Section 921 of Title 18, United States C ode, during the commission of an offense prosecutable as a felony, in violation of Title 18, United States Code, Section 924(c)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SIXTEEN(16) MONTHS on Count 7
under the provisions of Title 18, Section 4205(a) of the United States Code. Execution of sentence is STAYED to May 29, 1984, at which time the defendant shall surrender to the United Ecates Marshal, 10130 United States Courthouse, 515 Rusk Avenue, Houston, Texas, not later than 1:00 P. M. The defendant is allowed to remain on bond until the date of surrender.

The Court finds that the Victim and Witness Protection Act does not apply.

A pre-sentence report was submitted to the Court prior to the imposition of sentence with copies furnished to counsel pursuant to Rule 32, of the Federal Rules of Criminal Procedure.

513

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

(2) copies U.S. Marshal [illegible]
Attest Copies
(3) U.S. Probation
(3) → U.S. Marshal
Federal Public Defender
U.S. Atty
5-9-84 [illegible]

District Judge
Magistrate ▶ G. Wix Unthank
G. WIX UNTHANK, JUDGE Date May 5, 1984

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

AT PIKEVILLE
[illegible] G. WHITMER
[illegible]

CRIMINAL NO. 83-8

UNITED STATES OF AMERICA PLAINTIFF

VS:

EDGAR JONES, et. al. DEFENDANTS

-ORDER-

On January 24,1984, during the regular proceedings of trial, but out of the presence of the jury, the Court heard counsel on oral motions and pending matters, and being duly advised,

ORDERED HEREIN:

(1) The oral motion of the United States to dismiss defendant, Morris Ray Hall, without objection thereto, be and hereby , SUSTAINED.

(2) Oral motion of the United States that a diagram of the Courtroom reflecting the room's dimensions be made a part of the record, is OVERRULED AS MOOT, in that the Court has directed that such will become a part of the record as a Court Exhibit.

(3) Oral motion of the United States, joined by the defendants, that the questions submitted to the Court in writing, be asked the prospective jury panel prior to the peremptory challenges being exercised, be and hereby is, SUSTAINED.

(4) Upon review of the report furnished by the defendant Eugene Tackett, from Dr. Robert Granacher, Jr., the Court finds said defendant mentally competent to stand trial. HWEREAS, the Exparte Motion of the defendant for subpoensa to issue for Dr. Granacher, and Bob Hamilton as witnesses, at the expense of the United States, is GRANTED.

(5) The Motion of the defendant, Edgar Jones, to exclude evidence of overt acts not alleged in the indictment, TENDERED on January 6, 1984, be and hereby is FILED, and OVERRULED as not being timely.

(6) The orally renewed request of defendant, Edgar Jones, as to Brady Material, is SUSTAINED in that by agreement of the United States all such material will be given to the defendants as it becomes available to the United States.

(7) Motions of Coal Mac Sales, Inc., Mac Mining Co., Inc. and Ray-Mac Coal Company, Inc. to quash subponea duces tecum and Motions for protective Order, filed on December 9, and December 12, 1983, are tentatively scheduled to be heard on January 25, 1984, at the hour of 9:00 A.M.

This the 26th day of January, 1984.

G. WIX UNTHANK, JUDGE

DISTRIBUTION LIST FOR CRIMINAL 83-8-1

COPIES TO:

U. S. ATTORNEY
JERRY A. PATTON
AUBREY HARWELL/A. MOORE
WILLIAM D. KIRKLAND
BERNARD PAFUNDA
E. J. WALBOURN, III
ELDRED ADAMS, Jr.
DAVID W. THOMAS
DAN ROWLAND
HERSHEL BRANSON, Jr.
TOM HOLLON
LOWELL ED SPENCER
U. S. PROBATION
U. S. MARSHAL [illegible]

1-27-84
[illegible]

U 'TED STATES DISTRICT COUR'
EASTERN DISTRICT OF KENTUCKY
CRIMINAL MINUTES — TRIAL

Pikeville Case No. 83-8 At Pikeville Date 4-11-84

XXXXXXXXXXXXORDER(GWU) The jury panel was returned for further deliberation, EREAS, verdicts were returned as to the ten remaining defendants. The jury ving completed its final deliberation, **IT IS ORDERED**, the sequestering of said nel be, and hereby is, ended and all members excused from further jury service.

RESENT: HON. G. Wix Unthank, JUDGE

B. England — Deputy Clerk
[illegible] — Court Reporter
Thomas L. [illegible] / [illegible] / [illegible] — Asst. U.S. Attorney

DEFENDANTS	ATTORNEYS FOR DEFENDANTS
Jason Moore	(1) William [illegible]
Benny Caudill	(2) E. J. [illegible] III
Kenny Blankenship	(3) E. [illegible]
Eugene Tackett	(4) [illegible]
Harold Moore	(5) E. J. [illegible] III
Hermit Newsome	(6) E. J. [illegible] III
Tim Milan	(7) [illegible]

(See pages 2 and 3 for additiona listing of attorneys and defendants0

JURY TRIAL.. The Jury impaneled and sworn is as follows: ___ COURT TRIAL.

Eddie L. Ratliff
Norma L. Craft
Dennis Clark
James Flinchum,Jr.
(5) Gary W. Damron
(6) Patricia Sparks
(7) Sharon Tackett
(8) Anna Lykins
(9) Loretta G. May
(10) Lorraine Castle
(11) Mary Lee Curry
(12) Jackie Adkins

lternate) ______ (2nd Alternate) ______

lternate) ______ (4th Alternate) ______

Eastern District of Kentucky
FILED
APR 12 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

luction of Evidence for pltf-deft ___ begun ___ resumed ___ concluded.

Rebuttal evidence; ___ Surrebuttal evidence.

ase continued to ______ at ______ for further trial.

lotion for judgment of acquital ___ granted ___ denied ___ submitted.

ury retires to deliberate at 9.04 A.M.; Jury returns at 3:30 P.M.

INDING BY COURT. X JURY VERDICT. SEE SIGNED VERDICT AS TO EACH DEFENDANT.

FENDANT NOT GUILTY -Cts.1,2,3 oore)
FENDANT NOT GUILTY -Cts. 1, 2, audill)
FENDANT NOT GUILTY- Cts.1, 3 lankenship)
FENDANT NOT GUILTY - Cts. 1, 3, Tackett)
(10) DEFENDANT NOT GUILTY - Cts. 1, 3, (Harold Moore)
(11) DEFENDANT NOT GUILTY - Cts 1, 2, (Hermit Newsome)
(12) DEFENDANT NOT GUILTY - Cts. 1,3, (Tim Milan)

VERDICTS-CONTINUED ON PAGE TWO

y polled. ___ Polling waived. ___ Mistrial declared.

ntinued until ______ 19___ at ______ for sentencing.

urt received Presentence Report. ___ A copy was furnished to counsel pursuant to Rule 32 F.R.C.P.

py of Presentence Report not requested. ___ Defendant to remain on bond; ___ remanded to custody.

Initials of Deputy Clerk be

[illegible]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CRIMINAL MINUTES — TRIAL

Pikeville Case No. 83-8 At Pikeville Date 4-11-84

XXXXXXXXXXX: Page Two

PRESENT: HON. G. Wix Unthank, JUDGE

B. Endicott — Deputy Clerk
S. Lindstrom — Court Reporter
See Page One — Asst. U.S. Attorney

DEFENDANTS	ATTORNEYS FOR DEFENDANTS
8) (1) Austin "B" Moore	(1) Bernard Pafunda
9) (2) Pebo Gayheart	(2) Tom Helton
10) (3) Raymond Hall	(3) William Eckhardt
(4)	(4)
(5)	(5)
(6)	(5)
(7)	(7)

___ JURY TRIAL. The Jury impaneled and sworn is as follows: ___ COURT TRIAL.

(1)	(5)	(9)
(2)	(6)	(10)
(3)	(7)	(11)
(4)	(8)	(12)

(1st Alternate) ___ (2nd Alternate) ___

(3rd Alternate) ___ (4th Alternate) ___

Introduction of Evidence for plff-deft ___ begun ___ resumed ___ concluded.

___ Rebuttal evidence; ___ Surrebuttal evidence.

___ Case continued to ___ at ___ for further trial.

___ Motion for judgment of acquital ___ granted ___ denied ___ submitted.

___ Jury retires to deliberate at ___; Jury returns at ___.

continued from Page One

___ FINDING BY COURT. x JURY VERDICT/ SEE SIGNED VERDICT AS TO EACH DEFENDANT.

(15) DEFENDANT NOT GUILTY - Cts. 1, 2
(Austin Moore) xxxxxxxxx

(18) Raymond Hall DEFENDANT NOT GUILTY -Cts. 1, 2, 4

(4) DEFENDANT ___

(16)x DEFENDANT NOT GUILTY - Cts.1,2,3,
(Pebo Gayheart) xxxxxxxx

(6) DEFENDANT ___

x Jury polled. / at the request of the United States ___ Polling waived. ___ Mistrial declared.

Case continued until May 4, (Friday) 1984 at 11:00 A.M. for sentencing.
*of defendant Van B. Patton

___ Court received Presentence Report. ___ A copy was furnished to counsel pursuant to Rule 32 F.R.C.P.

___ Copy of Presentence Report not requested. ___ Defendant to remain on bond; ___ remanded to custody.

This the 12th day of April, 1984

Initials of Deputy Clerk be

G. WIX UNTHANK, JUDGE

No. 83-8

UNITED STATES DISTRICT COURT

EASTERN District of KENTUCKY

PIKEVILLE Division

THE UNITED STATES OF AMERICA

vs.

EDGAR JONES ET AL.

Copy: Judge 6-6-83
[illegible] Zimmerd 6/21/83
—mt

INDICTMENT

Ct.1 - 18 USC §1951 - Conspiracy to interfer with commerce by extortion
Cts. 2-5 - 18 USC §1951 & §2 - Interfering with commerce by extortion
Cts 6 & 7 - 18 USC §924(c) - Carrying firearm during commission of felony
Ct.8 - 18 USC Sec.844(i) - Damaging property in interstate commerce
Ct.9 - 26 USC §5861(f) & 5871; 18 USC §2 - Making explosive device withoutzpaying making tax
Ct.10 - 26 USC §5861(d) & 5871 - Possession of firearm not registered in NFRC

A true bill.

Geo C Brown
Foreman.

Filed in open court this ______ *day*

of ______ *A.D. 19* ______

Eastern District of Kentucky
FILED
JUN 06 1983
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

______ *Clerk.*

Bail, $ ______

Eastern District of Kentucky
FILED
JUN 06 1983
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

VS. INDICTMENT NO. 83-8

EDGAR JONES
JASON MOORE
GERMAN STUMBO
DREXIL HALL
TEDDY KINNEY
BENNY CAUDILL
ayne KENNETH ~~ROLLAND~~ Rowland a/k/a POSTMAN
RANNY BLANKENSHIP
EUGENE TACKETT
HAROLD MOORE
HERMIT NEWSOME
TIM MILAN
MOSE MEAD
DONAHUE HALBERT
AUSTIN "BO" MOORE
PEBO GAYHEART
LINVILLE MOSLEY
RAYMOND HALL
MORRIS RAY HALL
VAN B. PATTON

Amended per Order 6-15-83
BE

* * * * *

GENERAL ALLEGATIONS

That at all times material to each and every count of this indictment:

1. JRM Coal Company, Inc. (hereinafter JRM) was a corporation of the Commonwealth of Kentucky, engaged in the business of leasing and selling coal in Floyd County, Kentucky and elsewhere.

2. Edgar Jones was the president and principal officer of JRM with the other officers being Greg Jones and Carson Akers.

3. JRM was under a contract dated September 29, 1980 to supply 360,000 tons of coal per year for five years to South Carolina Electric and Gas Company, a South Carolina Corporation, to be shipped from McDowell, Floyd County, Kentucky via "unit train lots" of approximately 7,500 tons per week.

4. JRM contracted with various coal companies to mine the coal JRM had under lease in order to fulfill its contract to South Carolina Electric and Gas Company, including Bryan

Coal Co., Calamity Coal Co., A & A Coal Company and Dye Coal Co.

5. Bryan Coal Co. and Calamity Coal Co. were owned and operated by Phillip and Pearl Booth. A & A Coal Co. was owned and operated by Earl Adkins and Phillip Adkins. Dye Coal Company was owned and operated by Ricky Dye, Litton Dye and Tilton Dye.

6. Bryan Coal Co., Calamity Coal Co., A & A Coal Co. and Dye Coal Co. employed coal miners who were represented for the purposes of collective bargaining by the United Mine Workers of America (hereinafter UMWA) and UMWA Local 5967 of East McDowell, Kentucky.

7. The officers of UMWA Local 5967 were: Teddy Kinney, President; Drexil Hall, Vice President; Denny Hinkel, Treasurer; and Walter Blackburn, Recording Secretary.

8. Ray-Mac Coal Company (hereinafter Ray-Mac) was a Kentucky partnership engaged in the mining of coal on John Hall and Hamilton Branch near McDowell in Floyd County, Kentucky for shipment in interstate and foreign commerce, and purchased, transported and caused to be moved goods, materials, supplies and commodities in interstate commerce.

9. Ray-Mac's employees were not represented for the purposes of collective bargaining by the UMWA.

COUNT I
(18 U.S.C. Sec. 1951)

THE GRAND JURY CHARGES:

1. The General Allegations of this indictment are realleged in this count and incorporated herein by reference.

2. That from on or about the 4th day of January, 1982, the exact date being unknown, and continuously thereafter up to and including the day of the return of this indictment, in Floyd County, Kentucky, in the Eastern District of Kentucky and elsewhere,

EDGAR JONES
JASON MOORE
GERMAN STUMBO
DREXIL HALL
TEDDY KINNEY

BENNY CAUDILL Rowland
wayne KENNETH ~~ROLLAND~~ a/k/a POSTMAN
RANNY BLANKENSHIP
EUGENE TACKETT
HAROLD MOORE
HERMIT NEWSOME
TIM MILAN
MOSE MEAD
DONAHUE HALBERT
AUSTIN "BO" MOORE
PEBO GAYHEART
LINVILLE MOSLEY
RAYMOND HALL
MORRIS RAY HALL

defendants herein, did unlawfully and knowingly combine, confederate and agree together and with each other, and with Ed "Panhandle" Moore, Phillip Booth, Pearl Booth, Van B. Patton, Phillip Dale Moore, Jake Moore, Philman Caudill and Basil Ray Moore, named as co-conspirators but not as defendants herein, and with divers other persons to the grand jury unknown, to obstruct, delay and affect commerce, as that term is defined in Section 1951 of Title 18, United States Code, and the movement of articles and commodities in commerce, by extortion, as that term is defined in Section 1951 of Title 18, United States Code.

3. It was a part of said conspiracy that said defendants and unindicted co-conspirators would obtain and agree to obtain certain property of Ray-Mac, the operators, officers and agents of said corporation, to wit: the right to pursue a lawful business, including income, profits, sales, contracts; the right to make decisions free from outside pressure; and the right to compete with JRM and/or any other coal company engaged in the business of mining, transporting, selling and distributing coal in the Eastern District of Kentucky and elsewhere, said property being obtained and agreed to be obtained with the consent of Ray-Mac, its owners, operators, and agents; such consent being induced by the wrongful use of threatened and actual force, violence, fear, and including the fear of financial, economic and physical injury to Ray-Mac, its officers, agents representatives and tc the employees of Ray-Mac; in that during the times and at the places referred to herein, said defendants

and unindicted co-conspirators did directly and indirectly threaten to and did delay and disrupt the mining, shipment, transportation, delivery and sale of coal by Ray-Mac and the general business operations of Ray-Mac, in that the defendants and co-conspirators, through the use of actual and threatened force, violence and fear, agreed to and did force Ray-Mac to cease the mining of coal on John Hall Branch in Floyd County, Kentucky.

All in violation of Title 18, United States Code, Section 1951.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants and co-conspirators performed the following overt acts, among others:

1. On or about January 4, 1982, Edgar Jones met with Ernie Justice, the president of United Mine Workers District 30, and attempted to get District 30 to organize Ray-Mac.

2. On or about February 1, 1982, the exact date being unknown, Pearl Booth borrowed three rifles from Wendall Ray Newman, her brother.

3. On or about February 10, 1982, the exact date being unknown, Pebo Gayheart borrowed a rifle from Ballard Mosley.

4. On or about February 15, 1982, Edgar Jones met with Phillip and Pearl Booth wherein Edgar Jones stated that Ray-Mac had underbid him on a contract for the sale of coal and that because JRM would not be able to ship the coal required to fill the weekly "unit train", the coal miners working for JRM's contract miners would have to engage in a strike to shut down Ray-Mac's coal mining operations.

5. On or about February 15, 1982, Edgar Jones had a meeting with Drexil Hall, Jason Moore and Teddy Kinney.

6. On or about February 15, 1982, a picket line was formed at the entrance to Ray-Mac near McDowell in Floyd County, Kentucky by Drexil Hall, Jason Moore and others.

7. On or about February 15, 1982, Edgar Jones had a

meeting with Ricky Dye, Phillip Adkins, Earl Adkins, Phillip Booth, Carson Akers, German Stumbo, and Greg Jones wherein Edgar Jones told his contract miners that a picket line was to be set up at Ray-Mac and directed his contract miners to allow their men to walk off their jobs to join the picket line at Ray-Mac.

8. On or about Tuesday, February 16, 1982, Edgar Jones gave Phillip Booth a case of Jack Daniels whiskey to give to the men on the picket line.

9. On or about Tuesday, February 16, 1982, Drexil Hall fired a pistol at a coal truck operated by Danny Blanton, a coal truck carrying coal from Ray-Mac, as Blanton's truck crossed a picket line which had been set up at the entrance to Ray-Mac.

10. On or about February 16, 1982, Jason Moore fired a rifle at coal trucks carrying coal from Ray-Mac.

11. On or about February 16, 1982, Edgar Jones, German Stumbo, Phillip Dale Moore, Jason Moore, Phillip Booth, Teddy Kinney and Pearl Booth met, whereat Edgar Jones stated he would see that the striking miners would get the guns and ammunition needed to stop Ray-Mac from operating.

12. On or about February 16, 1982, German Stumbo and Ed "Panhandle" Moore went into the hills around Ray-Mac to "scout things out".

13. On or about February 16, 1982, Jason Moore met with Pearl Booth and Jason Moore gave Pearl Booth a list of guns and ammunition which would be needed to arm the men in order to shut down Ray-Mac's operations.

14. On or about February 16, 1982, Pearl Booth called Donahue Halbert of Halbert's Gunsmith and told Halbert what guns and ammunition were needed.

15. On or about February 16, 1982, Pearl Booth gave the list of guns and ammunition and a check drawn on Calamity Coal Co. to Phillip Dale Moore and told him to go to Donahue Halbert to purchase the ammunition.

16. On or about February 16, 1982, Phillip Dale Moore purchased $550.00 of ammunition from Donahue Halbert, using the check referred to in overt act no. 15.

17. On or about February 16, 1982, Donahue Halbert failed to record the sale of the ammunition referred to in overt act no. 16 in the Firearms Ammunition Records of Halbert's Gunsmith.

18. On or about February 16, 1982, Phillip Dale Moore brought the ammunition back to Pearl Booth.

19. On or about February 16, 1983, Donahue Halbert sold Teddy Kinney thirty-one (31) boxes of ammunition and one pistol.

20. On or about February 17, 1982, Phillip Booth delivered guns, including those referred to in overt act no. 2, and the ammunition referred to in overt act no. 16, to Jason Moore, Drexil Hall, and others at Stiffy Stumbo's barn.

21. On or about February 17, 1982, German Stumbo, Jake Moore, Hermit Newsome, Austin "Bo" Moore, Teddy Kinney, Ed "Panhandle" Moore, Eugene Tackett, Pebo Gayheart, Harold Moore, Phillip Dale Moore and Philman Caudill, and others, were driven up Hood's Fork of Frasure's Creek by Linville Mosley and Benny Caudill.

22. On or about February 17, 1982, German Stumbo and Ed "Panhandle" Moore led Jake Moore, Hermit Newsome, Austin "Bo" Moore, Teddy Kinney, Eugene Tackett, Pebo Gayheart and Harold Moore into the hills overlooking the Ray-Mac coal mining site, where German Stumbo and Ed "Panhandle" Moore directed them to shoot at equipment and personnel located at the Ray-Mac mining site.

23. On or about February 17, 1982, Edgar Jones met with Pearl Booth and Jones advised her that he would reimburse her for the money she had paid and was paying for the guns and ammunition.

24. On or about February 17, 1982, Teddy Kinney cashed check no. 1390 in the amount of $3,000.00 drawn on UMWA Local 5967 at the First Guaranty Bank at Martin, Kentucky.

25. On or about February 17, 1982, Teddy Kinney purchased twelve (12) boxes of ammunition from Donahue Halbert.

26. On or about February 17, 1982, Jason Moore gave Pearl Booth a list of additional ammunition needed.

27. On or about February 17, 1982, Pearl Booth gave Phillip Dale Moore the list and a check on Calamity Coal Co. and instructed him to purchase additional guns and ammunition.

28. On or about February 17, 1982, Donahue Halbert sold

Phillip Dale Moore a 9mm pistol and ammunition paid for by the check referred to in overt act no. 27 above.

29. On or about February 17, 1982, Morris Ray Hall purchased ten (10) boxes of ammunition from Donahue Halbert.

30. On or about February 17, 1982, Phillip Dale Moore and Morris Ray Hall brought the guns and ammunition back to Pearl Booth.

31. On or about Thursday, February 18, 1982, Phillip Booth delivered the ammunition referred to in overt act no. 30 to Stiffy Stumbo's barn.

32. On or about February 18, 1982, Ed "Panhandle" Moore, Van B. Patton, Eugene Tackett, Benny Caudill, Ranny Blankenship, Tim Milan, German Stumbo, Pebo Gayheart, Teddy Kinney, Harold Moore, Jason Moore,and others unknown had a meeting at Stiffy Stumbo's barn on Frasure's Creek and discussed shutting down Ray-Mac.

33. On or about February 18, 1982, the individuals set forth in overt act no. 32 and others were driven to near Philman Caudill's house by Jason Moore and Raymond Hall and from there Ed "Panhandle" Moore led one group and German Stumbo led another group of men into the hills overlooking the Ray-Mac coal mining site, where they all fired rifles and pistols at Ray-Mac's personnel and equipment and at officers of the Kentucky State Police.

34. On or about February 18, 1982, Edgar Jones met with Phillip Booth and Pearl Booth and told them to be out of town the upcoming weekend and that things would happen for which they might be blamed.

35. On or about February 18, 1982, Teddy Kinney gave Van B. Patton $15.00.

36. On or about February 21, 1982, German Stumbo, Ed "Panhandle" Moore, Jake Moore, Teddy Kinney, Mose Mead, Kenneth Rolland a/k/a Postman, Raymond Hall, Benny Caudill and Van B. Patton met at German Stumbo's and constructed explosive devices consisting of dynamite, non-electric blasting caps and fuse.

37. On or about Sunday, February 21, 1982, German Stumbo, Ed "Panhandle" Moore, Jake Moore, Teddy Kinney, Mose

Mead, Kenneth Rolland a/k/a Postman, and Philman Caudill, by the use of dynamite and blasting caps, blew up a coal auger owned or leased by Ray Mack and placed another dynamite type explosive device on a bulldozer at the Ray-Mac mine with the intent of blowing it up.

38. On or about February 24, 1982, Morris Ray Hall purchased guns and ammunition from Donahue Halbert.

39. On or about February 24, 1982, Teddy Kinney purchased guns and ammunition from Donahue Halbert.

40. On or about February 26, 1982, Ed "Panhandle" Moore, Mose Mead, Philman Caudill and Basil Ray Moore, at the direction of Ed "Panhandle" Moore, burned down a coal tipple at Stumbo Hollow which had been leased to Ray-Mac for the purpose of shipping coal.

41. On or about February 27, 1982, Ed "Panhandle" Moore gave Philman Caudill $200.00.

42. On or about February 27, 1982, Philman Caudill gave Mose Mead $150.00 and Mose Mead gave Basil Ray Moore $50.00.

All in violation of Title 18, United States Code, Section 1951.

COUNT II
(18 U.S.C. Sec. 1951 and Sec. 2)

THE GRAND JURY FURTHER CHARGES:

1. The General Allegations of this indictment are realleged in this count and incorporated herein by reference.

2. That on or about the 17th day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky,

GERMAN STUMBO
HERMIT NEWSOME
AUSTIN "BO" MOORE
TEDDY KINNEY
RAYMOND HALL
KENNETH ROLLAND a/k/a POSTMAN
JASON MOORE
EUGENE TACKETT
PEBO GAYHEART
HAROLD MOORE

aided and abetted by

LINVILLE MOSLEY
BENNY CAUDILL
EDGAR JONES

named herein as defendants, and others unknown to the Grand Jury, and Phillip Dale Moore, Philman Caudill, Ed "Panhandle" Moore, and Jake Moore, did unlawfully and knowingly obstruct, delay and affect commerce, and did attempt to obstruct, delay and affect commerce, as that term is defined in Section 1951, Title 18, United States Code, and the movement of articles and commodities in such commerce by extortion, as that term is defined in Section 1951, Title 18, United States Code, in that the defendants and Phillip Dale Moore, Philman Caudill, Ed "Panhandle" Moore, Jake Moore and others unknown to the Grand Jury would obtain and attempt to obtain certain property of Ray-Mac, the operators, officers, and agents of said corporation, to wit: the right to pursue a lawful business including sales, income, profits, and contracts; the right to make decisions free from outside pressure; and the right to compete with JRM and/or any other coal company engaged in the business of mining, transporting, selling and distributing coal in the Eastern District of Kentucky and elsewhere, said property being obtained and attempted to be obtained with the consent of Ray-Mac, its owners, operators and agents, such consent being induced by the wrongful use of threatened and actual force, violence, fear and including the fear of financial, economic and physical injury to Ray-Mac, its officers, agents, representatives and employees; in that on or about February 17, 1982, the said defendants and Phillip Dale Moore, Philman Caudill, Jake Moore, Ed "Panhandle" Moore, and others unknown to the Grand Jury did fire rifles and pistols from the hills surrounding Ray-Mac's coal mining operation in Floyd County, Kentucky, at and toward the property, equipment and personnel of Ray-Mac in an attempt to stop Ray-Mac from engaging in the business of mining and shipment of coal.

All in violation of Title 18, United States Code, Section 1951 and Section 2.

COUNT III
(18 U.S.C. Sec. 1951 and Sec. 2)

THE GRAND JURY FURTHER CHARGES:

1. The General Allegations of this indictment are realleged in this count and incorporated herein by reference.

2. That on or about the 18th day of February, 1982, in Floyd County, in the Eastern District of Kentucky,

JASON MOORE
GERMAN STUMBO
BENNY CAUDILL
TEDDY KINNEY
EUGENE TACKETT
RANNY BLANKENSHIP
HAROLD MOORE
KENNETH ROLLAND a/k/a POSTMAN
PEBO GAYHEART
TIM MILAN

aided and abetted by

EDGAR JONES

named herein as defendants, and others unknown to the Grand Jury, and Van B. Patton, Jake Moore, Philman Caudill and Ed "Panhandle" Moore, did unlawfully and knowingly obstruct, delay and affect commerce, and did attempt to obstruct, delay and affect commerce, as that term is defined in Section 1951, Title 18, United States Code, and the movement of articles and commodities in such commerce by extortion, as that term is defined in Section 1951, Title 18, United States Code, in that the defendants and Van B. Patton, Philman Caudill, Jake Moore, Ed "Panhandle" Moore and others unknown to the Grand Jury, would obtain and attempt to obtain certain property of Ray-Mac, the operators, officers, and agents of said corporation, to wit: the right to pursue a lawful business including sales, income, profits, and contracts; the right to make decisions free from outside pressure; and the right to compete with JRM and/or any other coal company engaged in the business of mining, transporting, selling and distributing coal in the Eastern District of Kentucky and elsewhere, said property being obtained and attempted to be obtained with the consent of Ray-Mac, its owners, operators and agents, such consent being induced by the wrongful use of threatened and actual force, violence, fear and including the fear of financial, economic and physical injury to Ray-Mac, its officers, agents, representatives and employees; in that on or about February 18, 1982, the said defendants and Van. B. Patton, Philman Caudill, Jake Moore, Ed "Panhandle" Moore, and others unknown to the Grand Jury, did fire rifles and pistols from the hills surrounding Ray-Mac's coal mining operation in Floyd County, Kentucky, at and toward the property, equipment, and personnel of Ray-Mac in an attempt to stop Ray-Mac from engaging in the business of mining and shipment of coal.

In violation of Title 18, United States Code, Section 1951 and Section 2.

COUNT IV
(18 U.S.C. Sec. 1951 and Sec. 2)

THE GRAND JURY FURTHER CHARGES:

1. The General Allegations of this indictment are realleged in this count and incorporated herein by reference.

2. That on or about the 21st day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky,

GERMAN STUMBO
TEDDY KINNEY
MOSE MEAD
KENNETH ROLLAND a/k/a POSTMAN

aided and abetted by

EDGAR JONES
RAYMOND HALL
BENNY CAUDILL

named herein as defendants, and Ed "Panhandle" Moore, Jake Moore and Philman Caudill, and others unknown to the Grand Jury, did unlawfully and knowingly obstruct, delay and affect commerce and did attempt to obstruct, delay and affect commerce, as that term is defined in Section 1951, Title 18, United States Code, and the movement of articles and commodities in such commerce by extortion, as that term is defined in Section 1951, Title 18, United States Code, in that the defendants and Ed "Panhandle" Moore, Jake Moore, Philman Caudill and others unknown to the Grand Jury, would obtain and attempt to obtain certain property of Ray-Mac, the operators, officers, and agents of said corporation, to wit: the right to pursue a lawful business including sales, income, profits, and contracts; the right to make decisions free from outside pressure; and the right to compete with JRM and/or any other coal company engaged in the business of mining, transporting, selling and distributing coal in the Eastern District of Kentucky and elsewhere, said property being obtained and attempted to be obtained with the consent of Ray-Mac, its owners, operators and agents, such consent being induced by the wrongful use of threatened and actual force, violence, fear and including the fear of financial, economic and physical injury to Ray-Mac, its officers, agents, representatives and employees; in that on or about February 21, 1982, the said defendants and Philman Caudill, Jake Moore and Ed "Panhandle" Moore, and others unknown to the Grand Jury, with the use of explosive devices, to wit: dynamite, non-electric blasting caps and fuses, did damage a coal auger and attempt to damage a bulldozer belonging to Ray-Mac, in an attempt to stop Ray-Mac from engaging in the business of mining and shipment of coal.

All in violation of Title 18, United States Code, Section 1951 and Section 2.

COUNT V

(18 U.S.C. Sec. 1951 and Sec. 2)

THE GRAND JURY FURTHER CHARGES:

1. The General Allegations of this indictment are realleged in this count and incorporated herein by reference.

2. That on or about the 26th day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky,

MOSE MEAD

aided and abetted by

EDGAR JONES
GERMAN STUMBO

named herein as defendants, and Ed "Panhandle" Moore, Philman Caudill and Basil Ray Moore, did unlawfully and knowingly obstruct, delay and affect commerce, and did attempt to obstruct, delay and affect commerce, as that term is defined in Section 1951, Title 18, United States Code, and the movement of articles and commodities in such commerce by extortion, as that term is defined in Section 1951, Title 18, United States Code, in that the said defendants and Ed "Panhandle" Moore, Philman Caudill and Basil Ray Moore, and others unknown to the Grand Jury, would obtain and attempt to obtain certain property of Ray-Mac, the operators, officers, and agents of said corporation, to wit: the right to pursue a lawful business including sales, income, profits, and contracts; the right to make decisions free from outside pressure; and the right to compete with JRM and/or any other coal company engaged in the business of mining, transporting, selling and distributing coal in the Eastern District of Kentucky and elsewhere, said property being obtained and attempted to be obtained with the consent of Ray-Mac, its owners, operators and agents, such consent being induced by the wrongful use of threatened and actual force, violence, fear and including the fear of financial, economic, and physical injury to Ray-Mac, its officers, agents, representatives and employees; in that on or about February 26, 1982, the said defendants and Philman Caudill, Ed "Panhandle" Moore, and Basil Ray Moore, and others unknown to the Grand Jury, did with the use of gasoline, diesel fuel and tires, set fire to and destroy a coal tipple located at Simpson's Branch near Drift in Floyd County, Kentucky, which had been leased by Ray-Mac for the "tippling" of coal, in an attempt to stop Ray-Mac from engaging in the business of mining and shipment of coal.

All in violation of Title 18, United States Code, Section 1951 and Section 2.

COUNT VI
(18 U.S.C. Sec. 924(c))

THE GRAND JURY FURTHER CHARGES:

On or about the 17th day of February, 1982, in Floyd County, in the Eastern District of Kentucky,

GERMAN STUMBO
HERMIT NEWSOME
AUSTIN "BO" MOORE
TEDDY KINNEY
RAYMOND HALL
KENNETH ROLLAND a/k/a POSTMAN
JASON MOORE
EUGENE TACKETT
PEBO GAYHEART
HAROLD MOORE

did unlawfully carry firearms, as defined by Section 921 of Title 18, United States Code, during the commission of an offense in violation of Section 1951 of Title 18, United States Code, as set forth in Count II herein, a felony prosecutable in a Court of the United States.

In violation of Title 18, United States Code, Section 924(c).

COUNT VII
(18 U.S.C. Sec. 924(c))

THE GRAND JURY FURTHER CHARGES:

On or about the 18th day of February, 1982, in Floyd County, in the Eastern District of Kentucky,

JASON MOORE
GERMAN STUMBO
PEBO GAYHEART
TIM MILAN
BENNY CAUDILL
TEDDY KINNEY
EUGENE TACKETT
RANNY BLANKENSHIP
HAROLD MOORE
KENNETH ROLLAND a/k/a POSTMAN
VAN B. PATTON

did unlawfully carry firearms, as defined by Section 921 of Title 18, United States Code, during the commission of an offense in violation of Section 1951 of Title 18, United States Code, as set forth in Count III herein, a felony prosecutable in a Court of the United States.

In violation of Title 18, United States Code, Section 924(c).

COUNT VIII
(18 U.S.C. Sec. 844(i)

THE GRAND JURY FURTHER CHARGES:

That on or about the 21st day of February, 1982, in Floyd County, in the Eastern District of Kentucky,

GERMAN STUMBO
TEDDY KINNEY
MOSE MEAD
KENNETH ROLLAND a/k/a POSTMAN

did maliciously damage and destroy and attempt to damage and destroy by means and use of explosives, that is, Irica dynamite non-electric blasting caps and fuses, a Salem coal auger and bulldozer, then being used by Ray-Mac Coal Company for the purpose of mining coal for shipment in interstate commerce.

In violation of Title 18, United States Code, Section 844(i).

COUNT IX
(26 USC Secs. 5861(f) and 5871; 18 USC Sec. 2)

THE GRAND JURY FURTHER CHARGES:

That on or about the 21st day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky,

GERMAN STUMBO
TEDDY KINNEY
MOSE MEAD
KENNETH ROLLAND a/k/a POSTMAN

did knowingly make a firearm, that is, a destructive device in the form of a bomb made up of dynamite, non-electric blasing caps and fuse, without having paid the making tax as required by Section 5821, Title 26, United States Code; in violation of Sections 5861(f) and 5871, Title 26, United States Code and Section 2, Title 18, United States Code.

COUNT X
(26 U.S.C. Secs. 5861(d) and 5871)

THE GRAND JURY FURTHER CHARGES:

That on or about the 21st day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky,

GERMAN STUMBO
TEDDY KINNEY
MOSE MEAD
KENNETH ROLLAND a/k/a POSTMAN

knowingly possessed a firearm, that is, a destructive device in the form of a bomb made up of dynamite, non-electric blasting caps and fuse, which had not been registered to any of them in the National Firearms Registration and Transfer Record as required by Chapter 53, Title 26, United States Code; in violation of Section 5861(d) and 5871, Title 26, United States Code.

A TRUE BILL

Geo C Brown
FOREMAN

Louis DeFalaise
LOUIS DEFALAISE
UNITED STATES ATTORNEY

Cts.1-5: NM $10,000/10yrs/both
Cts.6,7: Not less than 1 year; not more than 10 year;
Ct.8: NM $10,000/10yrs/both
Ct.9: NM $10,000/10yrs/both

United States District Court
Eastern District of Kentucky
Office of the Clerk

Leslie G. Whitmer
Clerk

Manford R. Hughes
Chief Deputy Clerk

Please Reply to:
☐ P.O. Box 741
Lexington, KY 40586
☐ P.O. Box 355
Catlettsburg, KY 41129
☐ P.O. Box 1073
Covington, KY 41012
☐ P.O. Box 590
London, KY 40741
☒ P.O. Box 1139
Pikeville, KY 41501

June 11, 1984

Ms. Veronica Gonzalez
Room SD-24B
Judiciary Committee
United States Senate
Washington, D. C. 20510

Re: Pikeville Criminal No. 83-8 - United States of America
vs: Edgar Jones, et. al.

Dear Ms. Gonzalez,

Pursuant to you request, copies of Judgment and Commitment Orders in the above styled criminal action, were mailed to you on June 7, 1984.

Attached, as a supplement thereto, is a copy of an Order of the Court filed May 30, 1984, which amends the Judgment and Commitment as to defendant, German Stumbo, 83-8-3. As stated in the Order, this was necessary to correct a clerical error.

Please advise, if our office can be of further assistance.

Very truly yours,

LESLIE G. WHITMER, CLERK

Brenda J. England
Deputy Clerk In-Charge
Pikeville Office

Enc.-2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

Eastern District of Kentucky
FILED
MAY 30 1984
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

CRIMINAL 83-8-3

UNITED STATES OF AMERICA PLAINTIFF

VS:

GERMAN STUMBO DEFENDANT

- O R D E R -

The Court being sufficiently advised of a clerical error in the Judgment and Committment Order signed and filed May 29, 1984,

IT IS HEREBY ORDERED AND ADJUDGED, the following portion - "The sentence imposed upon Count 4 to be served consecutively to the sentence imposed upon Count 1 and concurrently to the sentence imposed upon Count 4" - be changed, and in lieu thereof, read - "The sentence imposed upon Count 4 to be served consecutively to the sentence imposed upon Count 1. ~~The sentence imposed upon Count 8 to be served consecutively to the sentence imposed upon Count 1~~ and concurrently to the sentence imposed upon Count 4."

The Judgment and Committment in all other respects shall remain in full force and effect.

This the 30th day of May, 1984.

G Wix Unthank
G. WIX UNTHANK, JUDGE

Copies: U.S atty
Wm. P. Kirkland
U.S Marshal - 3 attest & sealed copy [illegible] attest & seal
U.S probation
[illegible]

United States of America vs

United States District Court

DEFENDANT: GERMAN STUML

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

DOCKET NO. 183-8-3

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR May 25, 1984

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL William D. Kirkland
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a XXXXX/verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY. to Counts 1, 4 and 8.

Defendant has been convicted as charged of the offense(s) of Conspiracy to obstruct, delay and affect commerce, and movement of articles, etc. in commerce, by extortion; knowingly obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by extortion; maliciously damage and destroy and attempt to damage and destroy by means of explosives, a Salem coal auger and bulldozer, being used for mining of coal for shipment in interstate commerce in violation of Title 18, Sections 1951, and 844(i)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

THREE (3) YEARS on Count 1; THREE(3) YEARS on Count 4;EIGHTEEN (18) MONTHS on Count 8, under provisions of Title 18:4205(a). The sentence ~~imposed upon Count 4 to be served consecutively to the sentence imposed~~ upon Count 1 and concurrently to the sentence imposed upon Count 4. The sentence imposed upon Counts 4 and 8 are SUSPENDED and the defendant sh be placed upon probation for a period of TWO YEARS to begin upon releas from confinement. EXECUTION of the foregoing sentence is STAYED to June 25, 1984, at which time the defendant shall surrender to the United States Marshal in Lexington, Kentucky no later than 1:00 P.M. The defendant is allowed to continue on bond until date of surrender. A presentence report was submitted to the Court prior to the impositio of sentence with copies furnished to counsel pursuant to Rule 32. The Court finds that the Victim Witness Protection Act's provisions for restitution do not apply in this case.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends, that the defendant NOT be incarcerated in the same Federal Correctional Institution in which any of the following defendants are now imprisoned Pearl Booth; Phillip Booth; Phillip Dale Moore; Van B. Patton; Basil Ray Moore; Jake Moore; Philman Caudill

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Eastern District of Kentucky
FILED
1984
OB109
AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

G. WIX UNTHANK

Date May 29, 1984

Copies: USM-pink + 2 whites attest.
c.s. 5-4 (US Atty. [illegible]

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

EXECUTIVE COUNCIL

LANE KIRKLAND PRESIDENT — **THOMAS R. DONAHUE** SECRETARY-TREASURER

John H. Lyons
S. Frank Raftery
Glenn E. Watts
Angelo Fosco
Lloyd McBride
Wm. W. Winpisinger
John DeConcini
Joyce D. Miller
Frank Drozak
Richard I. Kilroy
William H. Bywater

Thomas W. Gleason
Murray H. Finley
Sol C. Chaikin
Charles H. Pillard
Kenneth T. Blaylock
William H. Wynn
Wayne E. Glenn
John J. Sweeney
James E. Hatfield
Vincent R. Sombrotto
Marvin J. Boede

Frederick O'Neal
Albert Shanker
Edward T. Hanley
J. C. Turner
Alvin E. Heaps
John J. O'Donnell
Robert F. Goss
Douglas A. Fraser
Barbara Hutchinson
Gerald W. McEntee
Patrick J. Campbell

10/25/83

AFL-CIO STATEMENT ON S. 462

The AFL-CIO strongly opposes the use of violence or threats of violence by both employers and employees during a labor dispute. Existing federal and state laws are more than adequate to prosecute those who commit such acts. They provide no immunity for union members or their leaders.

In the past the National Right to Work Committee, which is the prime mover of legislation to amend the Hobbs Act, has not been able to substantiate its allegations as to the need for this legislation and has not shown a capacity to tell the truth. The attached materials, submitted in response to previous Right to Work Committee allegations, demonstrates this point.

We cannot reply in advance to the allegations of the witnesses of the Right to Work Committee being made before the Senate Judiciary Committee today, since their identities have not been disclosed to us. Nor have we been invited to testify before the Senate Judiciary Committee. However, the past track of the National Right to Work Committee should put Congress and the public on notice that extreme care must be taken in assessing the allegations of their witnesses.

For further information: Contact Howard Marlowe, (202) 637-5082.

AMENDING THE HOBBS ACT: UNNECESSARY, UNWISE AND UNFAIR

Background

S. 462, to subject striking workers to federal prosecution for offenses committed during picket-line disputes.

While this bill, introduced by Senator Charles Grassley, R-IA, purports to be even-handed, it would in fact rewrite the present definition of "extortion" to enable the federal government to intervene in labor disputes on the employer's side. The bill would subject striking workers—but not employers or their representatives—to federal prosecution, long jail terms and stiff fines for picket-line misconduct. The Grassley bill represents a serious departure from the principle of national labor policy that the federal government should not side with either management or labor during legitimate labor disputes.

In addition, the Grassley bill would reverse the basic presumption, accepted throughout our history, that it is state and local governments that are to keep the peace. In practical terms, it would require a national police force to supervise the orderly conduct of strikes.

Because the Grassley bill raises a fundamental question as to the proper role of the federal government in law enforcement, it is the burden of its proponents to show:
1) that the bill addresses a serious problem;
2) that the states and localities have not been able to solve that problem;
3) that the federal government would be better able to solve the problem than the states and localities; and
4) that the added authority sought will not impair the federal government's ability to meet its current responsibilities.

The proponents of the Grassley bill have not produced evidence to support any of the above suppositions. On the contrary:
1) Government statistics show that misconduct during legitimate labor disputes is extremely rare (See Appendices A, A-1);
2) Investigations of the "worst-case" incidents reveal that state and local law enforcers have proven themselves capable of meeting their peacekeeping responsibilities (See Appendices D, E, F, H, R, S, T, W and X);
3 and 4) On December 10, 1981 the Department of Justice testified that "We do believe that the states and localities have been handling these matters (violence and other misconduct during labor disputes) effectively." (See page 10.)

The AFL-CIO urges you to read the facts presented on the following pages.

SUMMARY OUTLINE:

AFL-CIO REPORT ON S. 462 AND OTHER PROPOSALS TO AMEND THE HOBBS ACT

1. **What is the Hobbs Act and how would S. 462 change it?**
   - A. **The Hobbs Act is a federal statute defining the federal crimes of extortion and robbery.**
   - B. **S. 462 bills would expand the Hobbs Act** by overturning a U.S. Supreme Court decision so as to classify wrongdoing by strikers during legitimate union strikes as "extortion." Thus pickets convicted in strike-related altercations would be subject to stringent federal penalties in addition to current state and local sanctions.

2. **Why does the AFL-CIO oppose S. 462?**
   - A. The legislation is **unnecessary.** According to the U.S. Treasury Department, the statistics kept on incidents of serious strike-related violence show that such wrongdoing is extremely rare. And according to U.S. Justice Department testimony on S. 462, state and local law enforcement authorities have proved themselves capable of investigating and prosecuting the guilty in those rare cases.
   - B. The legislation is **unwise.** FBI resources, already severely overburdened, are being cut by Reagan Administration budget-cutters. S. 462 would further strain federal law enforcers' ability to meet uniquely federal demands such as drug trafficking and tax fraud.
   - C. The legislation is **unfair.** It would single out union members for federal "extortion" prosecution, without touching management "security" squads (some of which already have histories of violent provocation of pickets).

3. **If S. 462 is poor legislation, why would anyone support it? Who does support it?**
   - A. The real purpose of S. 462 is to undermine unions and the collective bargaining system.
   - B. The major supporter of S. 462 is the anti-union National Right to Work Committee.
   - C. The Right to Work Committee resorts to wild exaggerations, half-truths and outright lies in its fund-raising campaigns and its testimony to Congress.

4. **What is the National Right to Work Committee?**
   - A. The National Right to Work Committee is an employer front group. Its name is a misnomer. It has done nothing to provide jobs, better compensation or better working conditions for American workers.
   - B. The National Right to Work Committee is largely a fund-raising operation, and S. 462 is its No. 1 fund-raising tool.

// For details and substantiation, turn page...

1. **What is the Hobbs Act and how would S. 462 change it?**

A. **The Hobbs Act is a federal statute prohibiting extortion and robbery.** The Hobbs Act was enacted in 1936 and amended in 1950; it defines the instances in which these crimes are to be considered federal offenses.

The intent of the Congress that passed the Hobbs Act, as confirmed in 1973 by the U.S. Supreme Court in **U.S. v. Enmons**, was that acts of force occurring during a legitimate union strike for improved wages or benefits would not be covered by the Hobbs Act. As far as union activity is concerned, the Hobbs Act was intended to be applied only if the use of force is made in connection with **wrongful** demands for property, such as under-the-table payments or kickbacks. The focus of the Hobbs Act, therefore, is on racketeering as that offense is as commonly understood.

B. **S. 462 would expand the Hobbs Act** by overturning the U.S. Supreme Court decision so as to classify acts of force occurring in legitimate union collective bargaining as "extortion." Thus pickets--but not management security agents or strike-breakers--convicted of acts of assault or property damage during picket-line altercations would be subjected to tough federal sentences for "extortion" in **addition** to state and local sanctions. These federal sentences could include as much as 12 years in federal prison and a $250,000 fine.

2. Why does the AFL-CIO oppose S. 462?

A. The legislation is unnecessary.

The burden of proof is on the proponents of this massive incursion of federal authority on the states to show (1) that there is a problem of strike-related violence and (2) that the federal government would be better able to solve that problem than state and local authorities. The bill's backers have proven neither.

(1) Instances of strike-related violence are so rare that the FBI's annual crime report does not list such wrongs as a separate statistical category. Where federal jurisdiction already exists, by virtue of the provisions that make bombing and arson federal crimes, the federal agencies report that the number of "labor-related" incidents is extremely low.

The National Right to Work Committee charges that "labor-related violence" is the No. 1 cause of property damage in the United States, according to the Treasury Department. The fact is that the 1980 Treasury Department report shows that "labor-related" incidents—which include acts against workers, and which are not based on convictions or indictments but on unverified reports—account for only 4.3 percent of such incidents. A Treasury Department official has denounced Reader's Digest's use of Right to Work Committee misinformation.

(2) The backers of S. 462 also have failed to show that state and local law enforcement authorities are unable or unwilling to investigate and prosecute the few acts of strike-related wrongdoing that do occur. **In fact, examination of the "worst case" incidents cited by the Right to Work Committee proves just the opposite—the guilty are arrested, prosecuted and convicted by local authorities.** (For examples of the arrests and convictions made in connection with incidents reported by the anti-worker Right to Work committee, see Appendices.)

State and local law officers have not requested amendments to the Hobbs Act.

In recent testimony on a similar legislative proposal (S. 613, 97th Congress), the Reagan Administration Department of Justice witness said, "By and large, we simply have not found a reluctance" by local authorities to investigate and prosecute in cases of strike-related violence.

B. The legislation is unwise. Historically, states and localities have been given the responsibility of keeping the peace, except where there is an extraordinary federal interest. S. 462 would go against this tradition by creating broad federal crimes of aggravated assault and property destruction. **It is likely that no other bill has ever proposed such an enormous increase in federal criminal jurisdiction.**

This new authority, which would require the creation of a large federal police force, would come at a time when the Reagan Administration is calling for cuts in FBI funding. Already federal law enforcement authorities are severely strained in meeting uniquely federal demands such as drug trafficking, tax, bank and insurance fraud, and racketeering. Nearly 60 percent of all cases filed by U.S. Attorneys are dropped because the prosecutors do not have the time to handle them, according to Sen. Joseph Biden, ranking minority member of the Senate Judiciary Committee.

C. The legislation is unfair. Because an employer and his agents could not be construed as demanding workers' property during collective bargaining, employers would not be subject to Hobbs Act "extortion" prosecution—even if they deliberately provoked or engaged in violence. Thus S. 462 would bring down federal prosecutorial power on one side—the employer's side—in collective bargaining.

3. **If S. 462 is poor legislation, why would anyone support it? Who does support it?**

A. **The real purpose of S. 462 is to undermine unions** and the collective bargaining system. **Its supporters hope that passage of this legislation will chill the exercise of the right to form and join unions and to participate in a strike.**

B. **The major supporter of S. 462 is the anti-union National Right to Work Committee.** Very simply, the Right to Work Committee uses S. 462 as a fund-raising tool. Its direct-mail letters--which are churned out by the hundreds of thousands--open with a high-toned request for petitions supporting S. 462. But the all-important closing paragraph makes the real pitch:

> "The situation is urgent. Please sit down right this moment and write out your check to the National Right to Work Committee. You can make the difference. Thank you."

The Right to Work Committee assures its unsuspecting contributors that "every dollar will be used to see that the Grassley bill becomes the Law of the Land." That's not exactly so. The Committee has resisted attempts by the Council of Better Business Bureaus and others to determine how much it spends on lobbying as opposed to additional fund-raising. But according to the sketchy information available in the Committee's annual report, it spends at least 60 pecent of its budget on postage, printing, "mailing list maintenance" and other costs of fund-raising. And that does not include any salaries of staff engaged in the mass mailing drives.

C. **The National Right to Work Committee resorts to wild exaggerations, half-truths and outright lies in its fund-raising campaigns and in its testimony to Congress.** In order to boost the dollar return of its direct mail, the Committee conveys the **false** impression that "thousands of Americans...each year are brutalized...by union violence," and that "union hoodlums" are granted "immunity" from prosecution. Such inflammatory language may bring in more dollars, but it does a gross disservice to the truth.

For example, a Right to Work mailing charged that in Fremont, Nebraska, a non-striking worker was viciously attacked and terrorized. The Fremont Chief of Police, the City Prosecutor, the City Administrator, and NLRB officials all expressed familiarity with the lockout of workers at the Stormor Company in Fremont and have responded to complaints of violence, such as an assault on a union representative, but none had heard anything about this incident cited by the Right to Work Committee. Neither the alleged victim nor the Right to Work committee had filed any complaint.

For many other examples of lies and exaggerations by the Right to Work Committee, see Appendices.

4. What is the National Right to Work Committee?

A. **The National Right to Work Committee is an employer front group.** The Committee has resisted court orders and union requests for information about its sources of funding, but one clue did emerge during a union suit against the Committee: In a deposition, Right to Work President Reed Larson admitted that at least 84 percent of the Committee's contributions came from self-identified employers.

Thus employers have found a way around the Landrum-Griffin Act's prohibition against employers interfering with union members' relationship with their unions. The employers channel their money through the Right to Work Committee.

The founders of the Right to Work Committee include several corporate presidents and Fred A. Hartley, the former New Jersey Congressman who co-sponsored the anti-union Taft-Hartley Act. The Committee has lobbied in tandem with the National Association of Manufacturers, the U.S. Chamber of Commerce, the Associated General Contractors and other employer groups.

B. **The National Right to Work Committee is largely a fund-raising operation.** According to a recent annual report, more than 99 percent of its income comes from "dues and contributions." Further analysis of that report shows how the Committee spends the bulk of that income: on additional fund-raising. According to the Committee's rough breakdown of expenses, more than half of total expenses can be attributed to "fund raising," "membership development," "membership communication and services," and "public information." (The Committee counts its 1.5 million "members" as anyone who ever has mailed a contribution.)

Following is a more detailed breakdown of expenses:

Postage:	24% of total expenses
Printing:	19% of total expenses
Mailing list maintenance:	7% of total expenses
Research, public relations and membership research:	8% of total expenses
Computer processing:	2% of total expenses
Expenses attributable to fund-raising, exclusive of any staff salaries:	**60% of total expenses**

It is apparent that the Right to Work Committee spends less on lobbying than it does on finding new ways to raise money.

SUMMARY

The AFL-CIO opposes S. 462, a bill to amend the Hobbs Act so as to overturn the Supreme Court's decision in United States v. Enmons.

Background

In Enmons, the Court held that the present federal prohibition against extortion in interstate commerce (the Hobbs Act) does not apply to the use or threatened use of force during a labor dispute where the dispute is based on a union's pursuit of such legitimate objectives as improved wages, hours and working conditions. Under current law, no labor union member or official is immune from state or local prosecution if he or she commits an illegal act during a labor dispute. Thus, the net effect of the Court's decision is to make it clear that the policing of labor strikes is a matter for state and local law enforcement authorities.

S. 462 would overrule the Enmons decision and subject strikers engaged in a legitimate labor dispute who use unlawful force that causes more than minor bodily injury or minor property damage to a federal extortion prosecution carrying a penalty of up to $250,000 and a maximum sentence of 12 years imprisonment. The coincidence of union bargaining demands, no matter how legitimate, and such strike misconduct would make out the elements of an extortion case sufficient to permit a federal prosecutor to secure an indictment and to have the case sent to the jury.

In contrast to its harsh treatment of working people who are on strike to protect or improve their wages and working conditions, S. 462 would not subject to federal prosecution an employer or his agents who commit the exact same wrong in the exact same labor dispute. The employer and those on his side would be subject to a simple state assault or property destruction prosecution carrying much lesser penalties.

The supporters of the Hobbs Act amendment, in other words, want to put the federal government into the business of policing strikes solely on the side of the employer. Only striking workers would be subject to federal prosecution with long prison terms and stiff fines.

None of the vaguely reassuring language in the bill: (a) in fact protects against unwarranted use of the federal criminal law to turn what would otherwise be a state law misdemeanor into a major federal felony solely because the illegal use of force is by a worker on strike; or (b) corrects the bill's bias in favor of employers and against workers on strike. The provision declaring that S. 462 does not repeal or change the Clayton, Norris, LaGuardia, National Labor Relations and Railway Labor Acts does nothing to change the bill's avowed objective —to overrule the Enmons decision and to bring the federal government into labor disputes on the employer's side. Again, the first affirmative defense — that the conduct is "incidental to peaceful picketing" and has resulted only in "minor bodily injury" or "minor property damage" — while perhaps narrowing the bill's scope by a fraction of one percent — does nothing of substance to mitigate the unsound consequences of overruling Enmons. If picketing is not entirely "peaceful" or if the injury or damage is more than "minor," S. 462 will transmute what would otherwise be a striker's breach of the peace or a simple assault into a major federal felony while leaving the same wrongdoing by employers and their agents a state misdemeanor. Indeed, the reference to "peaceful picketing" is just artful camouflage. Even if the picketing is otherwise peaceful, first the affirmative defense is inapplicable if the injury or damage is not minor. And the second affirmative defense — that the government must prove "an intent to extort property" — has no legal effect at all. The government must prove an "intent to extort" in every extortion prosecution.

Reasons for Opposition

(1) Those who support this increase of federal authority have created the myth that "labor violence" is a problem that demands federal intervention. There is no support for that contention. Incidents of labor violence are so rare that the FBI does not publish statistics under this or any other related category in its annual crime report. Nor has any state or local law enforcement official gone on record as stating the labor violence is a problem demanding federal intervention. In recent Senate testimony, a spokesman for the Justice Department declared "By and large, we simply have not found a reluctance" on the part of local officials to prosecute instances of labor-related violence.

(2) As shown above, during labor disputes S. 462 is aimed only against workers. Thus, it represents a serious departure from the principle of national labor policy that the federal government should not side with either management or labor duing such disputes.

(3) S. 462 reverses the basic presumption, accepted throughout our history, that it is the state and local governments that are to keep the peace. In practical terms, Senator Grassley's proposal would require the maintenance of a national police force to supervise the orderly conduct of strikes. There is no evidence justifying a need for such a sweeping shift of power away from the states and localities and to the national government.

Conclusion

Collective bargaining in this country works well — so well that 98 percent of all labor disputes are settled without a strike. Among the principles of our collective bargaining process is that the federal government remains neutral —protecting the rights of both employees and employers. S. 462 would destroy that neutrality and, thereby, undermine the collective bargaining process.

There is no dispute that an assault or the destruction of property during a labor dispute — or at any other time — is a wrong that should be promptly investigated, prosecuted and, where prosecution is successful, punished. Neither the AFL-CIO nor any of its affiliates condone such misconduct. So successful are unions in preventing such misconduct that instances of wrongdoing are remarkably few in number.

In dealing with these rare instances — whether caused by workers or their employers — states and localities are meeting their peacekeeping responsibilities. The federal government is in no way better suited to deal with these instances than local law enforcement authorities. And, at a time when serious crimes are increasing and the federal law enforcement budget is decreasing, the Grassley amendment would divert scarce resources from high priority federal law enforcement responsibilities.

AFL-CIO Staff Contact:	Howard Marlowe (202-637-5082)

Testimony of Jonathan C. Rose, Assistant Attorney General, Department of Justice, on S. 613*, before the Senate Subcommittee on Criminal Justice, December 10, 1981:

Regarding S. 613's provisions establishing new federal crimes:

"We simply are not in the foreseeable future going to have the resources to handle this kind of vastly increased jurisdiction, and we do not think it is necessary because we do believe that the states and localities have been handling these matters effectively."

Q. Sen. Charles Grassley (R-IA): **"Is one of the reasons (for S. 613) because of a reluctance** because of political pressure, etc., of **local police to conduct the necessary investigation and prosecution** of these instances of violence?"

A. Rose: **"By and large, we simply have not found a reluctance** on the part of---- of course we are speaking nationally and always I suppose one can come up with specific episodes across the length and breadth of the country where that might be in some circumstance the case. As a general matter, we simply have not found it a matter, with regard to violence alone in labor disputes, that there ought to be a general federal jurisdiction to deal with that issue. **We simply have not found the reluctance, if it exists at all,** to reach any such extent that the kind of expansion of jurisdiction in this bill that would be provided is necessary or justified."

Q. Sen. Charles Mathias (R-MD): "To what extent can employees or union officials be prosecuted under the Hobbs Act today, as the law now stands, despite the Enmons decision?"

A. Rose: "I believe where you can show an illegitimate objective, for example even if someone calls a peaceful strike but it is for personal enrichment and not a legitimate labor bargaining objective, **I believe that could be reached under current law as the Hobbs Act is interpreted,** or where the violence is in fact used to achieve an illegitimate objective, such as personal enrichment or a kickback or something of that kind, that conduct could still be reached even with the Enmons decision."

*Note: S. 613 would also have overturned the Enmons decision.

Wall Street
Journal, 12/11/81

Reagan Opposes Conservatives' Bill To Make Union Violence a Federal Crime

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON—The Reagan administration opposed portions of a bill being pushed by conservative lawmakers that would make certain forms of union violence a federal crime.

A Justice Department official told a Senate Judiciary subcommittee that the proposals "would result in an extremely broad expansion of federal criminal enforcement responsibilities, which isn't justified, and which could severely tax the resources of the department." The official said that violence during labor disputes should continue to be prosecuted by state or local authorities.

The administration gave a qualified endorsement to another part of the bill that would effectively overturn a Supreme Court decision that exempts unions from a federal anti-extortion law in some cases. The court held that Congress didn't intend for the federal law to cover union violence during a strike to achieve legitimate collective bargaining objectives. The administration said it would support the change if minor acts of violence were excluded and if it applied equally to management and labor.

The union violence bill has become the center of a major battle between organized labor and conservatives. The AFL-CIO, testifying before the subcommittee yesterday, said the bill has become "a new weapon to beat unions over the head with." The labor federation said it opposes the use of violence, and added that state authorities can deal with the problem. It also said that the proposal would favor management. The AFL-CIO has mounted a major campaign to defeat the measure.

The National Right to Work Committee, which opposes compulsory unionism, is pushing just as hard in favor of the bill. It said changes in the law are needed to "close a loophole" and to make union officials "subject to prosecution for violence perpetrated in pursuit of extortionate objectives."

The group was joined yesterday by two major construction industry groups. However, most major business organizations haven't joined the effort to boost the bill. An official at one large business group conceded privately that picket-line violence isn't a high-priority item or major problem for many companies.

The bill was discussed last week when President Reagan met with top AFL-CIO officials at the White House. The federation leaders expressed opposition and, according to a White House source, Mr. Reagan assured them that he didn't see the need for expanded federal legislation.

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX A

CHARGE: "The U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms reports that labor-related violence has replaced political terrorism as the number one cause of property damage in this country."

FACT: The 1980 report of the Bureau of Alcohol, Tobacco and Firearms shows that "labor-related" incidents--which also include acts against striking workers--account for only 4.3 percent of all reported bombing incidents. That puts the "labor" statistical category a distant fifth on the list.

Commenting on the above charge, a spokesperson for the Bureau of Alcohol, Tobacco and Firearms had the following statement:

"The category of Labor Related Incidents listed in Tables 9, 10 and 27 of the Annual Report of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, entitled 'Explosives Incidents 1980' includes in that category incidents which could have been perpetrated by members of labor or management or others attempting to embarrass either group. The statistics are not based on convictions or indictments but rather on incidents as reported and an analysis of such incidents by ATF staff. We believe the Reader's Digest article of August, 1981, entitled 'We'll Get Those Scabs!', quoting ATF statistics is inaccurate--for purposes of explosives related statistics we do not have a category entitled political terrorism or one of union violence nor were we the source of any of the allegations contained in that article."

SOURCE: Robert J. Creighton, Special Agent in Charge, Explosives Enforcement Branch, Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX A-1

CHARGE: "Top officials in the U.S. Justice Department have said publicly that 'organized crime in (organized) labor is probably the most serious problem in the criminal field. It overrides everything else.' "

FACT: This allegation was never made by any "top official" of the U.S. Justice Department. In 1978 hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affiars, Senator Sam Nunn said: "Concerns have also surfaced in the news media, for example, a Justice Department prosecutor was recently quoted as saying that 'organized crime in labor is probably the most serious problem in the criminal field!' " (emphasis added)

However, Kurt W. Muellenberg, head of the Justice Department's Organized Crime Racketeering Section in 1978 and a witness before the Nunn Subcommittee in 1978, has stated that this assertion was never made or authorized by him. Mr. Muellenberg is currently a Criminal Division attorney in the Justice Department. In addition, former Attorneys General Griffin Bell and Benjamin Civiletti deny making or authorizing such a statement. And Phillip Heyman, former Assistant Attorney General in charge of the Criminal Division, has declared that he does not believe the assertion is true.

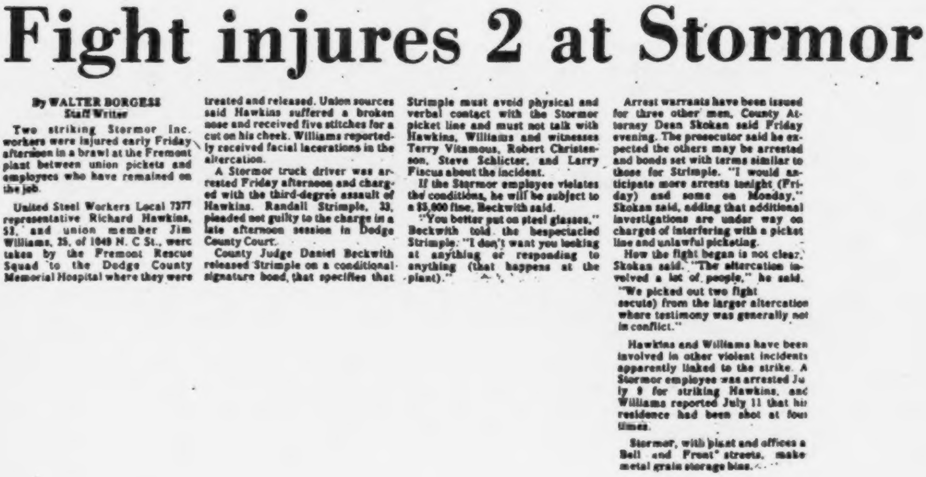
THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX B

CHARGE: "A violent campaign against nonstriking employees of a Fremont, Nebraska grain bin factory took an ugly turn with recent reports that two thugs pinned down a terrified worker while a third assailant, in a cold-blooded act of cruelty calculated to inflict excruciating physical and psychological pain, repeatedly and expertly slashed the man with a razor, but stopped short of killing him."

FACT: The Fremont, Nebraska Chief of Police, the City Prosecutor, the City Administrator, and officials of the regional branch of the National Labor Relations Board all expressed familiarity with the lockout of workers at the Stormor Company in Fremont, and have responded to complaints of violence, such as an assault on Union Representative Richard Hawkins. But none had heard anything about this alleged "razor slashing" incident. Neither the alleged victim nor the National Right to Work Committee had filed any complaint.

SOURCE: Fremont, NE Chief of Police Francis Hurt
Fremont City Prosecutor Dean Skokan
Fremont City Administrator Jack Sutton
National Labor Relations Board Kansas City Regional Office spokesman
Richard Auslander
Freemont Tribune, 7/25/81 (below)



Fight injures 2 at Stormor

By WALTER BORGESS
Staff Writer

Two striking Stormor Inc. workers were injured early Friday afternoon in a brawl at the Fremont plant between union pickets and employees who have remained on the job.

United Steel Workers Local 7377 representative Richard Hawkins, 52, and union member Jim Williams, 25, of 1049 N. C St., were taken by the Fremont Rescue Squad to the Dodge County Memorial Hospital where they were treated and released. Union sources said Hawkins suffered a broken nose and received five stitches for a cut on his cheek. Williams reportedly received facial lacerations in the altercation.

A Stormor truck driver was arrested Friday afternoon and charged with the third-degree assault of Hawkins. Randall Strimple, 33, pleaded not guilty to the charge in a late afternoon session in Dodge County Court.

County Judge Daniel Beckwith released Strimple on a conditional signature bond, that specifies that Strimple must avoid physical and verbal contact with the Stormor picket line and must not talk with Hawkins, Williams and witnesses Terry Vitamous, Robert Christenson, Steve Schlicter, and Larry Fiscus about the incident.

If the Stormor employee violates the conditions, he will be subject to a $5,000 fine, Beckwith said.

"You better put on steel glasses," Beckwith told the bespectacled Strimple: "I don't want you looking at anything or responding to anything (that happens at the plant)."

Arrest warrants have been issued for three other men, County Attorney Dean Skokan said Friday evening. The prosecutor said he expected the others may be arrested and bonds set with terms similar to those for Strimple. "I would anticipate more arrests tonight (Friday) and some on Monday," Skokan said, adding that additional investigations are under way on charges of interfering with a picket line and unlawful picketing.

How the fight began is not clear, Skokan said. "The altercation involved a lot of people," he said. "We picked out two fight secute) from the larger altercation where testimony was generally not in conflict."

Hawkins and Williams have been involved in other violent incidents apparently linked to the strike. A Stormor employee was arrested July 9 for striking Hawkins, and Williams reported July 11 that his residence had been shot at four times.

Stormor, with plant and offices a Bell and Front streets, make metal grain storage bins.

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX C

CHARGE: An August 1981 Reader's Digest report of a Right to Work Committee-backed suit against the United Steelworkers Union includes the following charges:

"Fired, (union local President Frank) Russell continued to boss the union from his home."

FACT: Russell had been elected president for most of his years at the plant. He was an effective leader, and National Rejectors, Inc. had twice tried to fire him because of this. Arbitrators ordered the company to rehire Russell because the discharges had been without just cause.

CHARGE: "Russell demanded a strike."

FACT: Workers voted 248-37 to strike because of many unresolved grievances.

CHARGE: "(The few nonstriking workers) were confronted by scores of union members brandishing tire tools. The crowd began howling with rage..."

FACT: No evidence of this charge was produced at the trial. What was admitted was that two of the nonstrikers had illegally carried guns into the plant. Hot Springs, Arkansas Police Chief Lieutenant Floyd Orrell testified that he confiscated the weapons. He also testified that he did not see any tire tools or other objects in the hands of strikers.

CHARGE: "Only Dana Milligrock, a shy, soft-spoken woman whose silence seemed especially to infuriate the union members, chose to return to work."

FACT: During the trial, Milligrock testified that she had been on narcotics and had served a jail term for passing bad checks. The "shy" Milligrock had been married five times, had carried a gun to the plant, daring anyone to "mess with" her, and had made obscene gestures at strikers.

SOURCE: Transcript, Boyd v. Russell, Saline County, Arkansas Circuit Court No. CIV-78-488, May, 1980.

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX D

CHARGE: "Lawless Union Militants Attack Police in Florida: AFL-CIO picketers have been showering independent construction workers and local lawmen in Orange County, Florida, with rocks, bricks, and bottles in a spring-long spree of violence..."

FACT:: Orange County Sheriff Captain Chuck Simmons estimated that as many as 100 arrests have been made on both sides of this dispute. Charges have varied from misdemeanors to major assault charges, including as many as 20-25 felony charges, such as battery against a police officer. Right To Work Committee allegations that local law enforcers fail to bring lawbreakers to justice in such cases ring false in view of the many arrests made in Orange County.

SOURCE: Orange County, FL Sheriff Captain Chuck Simmons

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX E

CHARGE: An August 1981 Reader's Digest article which reported a Right to Work Committee suit against the United Steelworkers included the following: "Elizabethton, Tenn.: Striking steelworkers went on a rampage here two years ago, unleashing a series of bombings, shootings and acts of arson against non-striking workers at the Jarl Extrusions Company. A company security guard was shot to death, a second employee shot as she drove to work, a third severely beaten, suffering permanent injury."

FACT: Elizabethton Assistant Chief of Police David Roe reports that Gary Ford and Thomas Hermon were arrested, tried and convicted of the murder. Hermon was considered the instigator, according to Carter County Sheriff's Department spokesman Richard Lewis. He was not a union member or employee of the Jarl Co. Hermon was charged with second-degree murder and assault with intent to commit murder, and was found guilty and sentenced to 10 years on the first count, 1-2 years on the second, to be served consecutively. Hermon was sent to Nashville State Penitentiary.

Ford was found guilty of two counts of involuntary manslaughter and was sentenced to two consecutive terms of 2-5 years each. He also was sent to the Nashville State Penitentiary.

Nonstriking employees were convicted of shooting into homes, according to Assistant Chief of Police Roe.

SOURCE: Elizabethton, TN Assistant Chief of Police David Roe
Carter County Sheriff's Department spokesman Richard Lewis

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX F

CHARGE: "Lake Charles, Louisiana, 1976: ...The father of two children, a 26-year-old construction worker who belongs to the 'wrong' union, lies sprawled on the floor of the demolished trailer, killed by the union gunfire. No convictions." (emphasis added)

FACT: In connection with the murder of Joe Hooper, Donald Ray Lovett was arrested, charged and convicted of aggravated criminal damange to property and conspiracy. He was found guilty of both charges and was sentenced to the maximum penalty, a total of 22½ years. In addition, at least two others were convicted of aggravated criminal damage to property.

FACT: Louisiana Attorney General William J. Guste, Jr. has expressed strong opposition to S. 613 (predecessor of S. 462) for reasons detailed in a letter to Sen. Charles Mathias (R-MD) (attached).

SOURCE: William J. Guste, Jr., Louisiana Attorney General
Pat Quinlen, Chief Prosecutor, Louisiana Attorney General's Office.

APPENDIX F

State of Louisiana
DEPARTMENT OF JUSTICE

WILLIAM J. GUSTE, JR
ATTORNEY GENERAL

7TH FLOOR
234 LOYOLA BUILDING
NEW ORLEANS 70112

November 27, 1981

Honorable Charles Mathias
Chairman, Senate Sub-Committee
on Criminal Justice
358 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Mathias:

I am writing to express my opposition to the Thurmond Bill S.613.

Several fundamental issues are involved: The first issue is whether it is equal protection of the law to make picket line violence by union members a federal offense without making similar crimes by employer representatives a federal crime as well.

It seems to me this proposed legislation is fundamentally discriminatory against one class of citizens and represents unequal protection of the law.

The second issue is whether the country needs the Federal Government getting involved in crimes like simple assault or malicious mischief. State laws and local law enforcement agencies are fully adequate to deal with this kind of situation.

The F.B.I. and Federal Courts have far more important problems than to divert manpower and resources to handle this kind of problem.

Sincerely,

William J. Guste Jr.

WILLIAM J. GUSTE, JR.

WJG,Jr/sl

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX G

CHARGE: "Karin Seritis and Teri DeLoache were two young women looking for honest work as waitresses so they could work their way through college. But at the union hiring hall--where they were forced to go--the union boss had other ideas...The union official offered Karin and Teri a choice of 'jobs' in prostitution, or in a pornography studio, or performing sexual acts with animals at a private club."

FACT: Seritis, DeLoache and another waitress, Mary Snyder, won a civil suit against the union and its official, Ray Lane, for intentional inflection of emotional distress and breach of duty of fair representation. General and punitive damages totalled $225,000. Lane was forced from the union in disgrace and may have to pay $75,000 in personal damages to the waitresses.

SOURCE: Supreme Court of County of Alameda, CA

APPENDIX H

CHARGE: (Reader's Digest:) "Ravenna, Ohio: At least 40 striking teachers in this small community were arrested on charges of riot and obstruction of official business."

FACT: Forty-five people were arrested on charges of disorderly conduct, interference with a police officer, etc. All but two either pleaded guilty or were found guilty as charged; two were found guilty of lesser charges. Most were fined as much as $100 each. Once again, local authorities were not reluctant to arrest and prosecute.

SOURCE: Ravenna, OH Police Lieutenant Jerry Dietrich

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX I

CHARGE: "Wilkes-Barre, PA, October 1978. A mob of union toughs attacked a group of workers at the Wilkes-Barre Publishing Co."

FACT: Trouble on the picket line can be traced to the use of untrained but armed security guards to intimidate pickets. "Our impression was that there was very little training of the security guards," said Wilkes-Barre Police Chief John R. Swim. One guard was charged with employment as a security guard without the necessary state certification, Swim noted.

Shortly after the strike began, 30 of the Wackenhut Security Service guards quit work at Wilkes-Barre Publishing, according to union officials. Wackenhut then bused in 12 new guards from New York, but shortly after they arrived, they told strikers they wanted to leave. Their return fare was raised in a picket-line collection.

Local newspaper accounts provide a portrait of the strike much different from Right To Work Committee materials. Union members were the victims of various assaults by security guards and others:

Scranton Times, 10/9/78: "A Capital Cities guard, Stephen Foor, 23, of Pittsburgh, was arrested on charges of aggravated assault and battery after he allegedly used his vehicle to run down a picket, Frank Ancharski, Saturday."

Scranton Times, 10/10/78: "Thomas Murray, a printer on picket duty, was treated and released from Wilkes-Barre General Hospital after allegedly being hit in the fact with an ammonia-based fire repellant being sprayed through the chain-link fence by guards from the Wackenhut Security Service..."

Scranton Times, 10/14/78: "A company guard and a Wilkes-Barre man were arrested Friday on charges of rape and indecent assault upon a 38-year-old California woman who was staying at a Wilkes-Barre motel, according to police...Police said that incident allegedly took place at 2:30 a.m. Friday in a motel after the men engaged a 38-year-old woman in conversation, then allegedly forced themselves into her room and assaulted her."

According to union officials, the Wackenhut Security Service experienced difficulty in obtaining guards for duty in Wilkes-Barre. Shortly after the strike began, about 30 guards fled the plant. Wackenhut bused in 12 new guards from New York, but shortly after they arrived, they told strikers they wanted to leave. Their return fare was raised in a picket-line collection.

SOURCE: Wilkes-Barre, PA Chief of Police John R. Swim
Scranton Times

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX J

FACT: Nan Freeman, 18, a star student, National Merit Scholar, and religious youth group activist, was picketing the Talisman Sugar Company in Belle Glade, Florida when she was run over by a company trailer truck and killed.

SOURCE: Boston Evening Globe, 2/15/72 (attached)

Tues Boston Evening Globe
2-15-72

Memorial fund in making

Nan Freeman--a model for all

By Douglas S. Crocket
Globe Staff

WAKEFIELD—Her name was Nan Freeman but they called her Morning Glory because there never was a day she did not greet you smiling.

She was 18 and she was alive and enthusiastic and idealistic and believing.

And now she is dead and the people for whom she died are attempting to establish a memorial fund in her name.

It's been three weeks since Nan Freeman died beneath the wheels of a trailer truck as she picketed on behalf of farm workers in Belle Glade, Fla.

And today, her parents sit, still stunned, amid hundreds upon hundreds of wires and letters of condolence from people they never have met nor ever will know.

Mr. and Mrs. Milton Freeman are just now beginning to realize their loss. Most of the past three weeks have been a nightmare to them.

But yesterday, in their neat single-family home on Gould Street, the Freemans attempted to recall times past. But it was almsot too difficult.

When they spoke of their daughter, their voices choked and their eyes filled.

They displayed scores of telegrams — wires from people like Mrs. Martin Luther King, Sen. Edward Kennedy, farm labor leader Cesar Chavez.

They showed letters from young people, old people, working people.

And they tried to tell of the fund that the Farm Workers Union had begun in their daughter's name.

"If it helps just one young person like her, perhaps her 18-years will not have been in vain," Mrs. Selma Freeman said.

To understand the tragedy of Nan Freeman, one would have to know her.

First, she was one of Wakefield's most promising young people.

She ranked second in her class at Wakefield high.

She was quietly but forcefully active in the things of youth, focusing her term papers on American Indians and the blacks and on social change.

She was a National Merit Scholar and won a $1000 scholarship from the Massachusetts AFL-CIO.

She was active in her temple youth groups and a follower of Sabbath and Jewish dietary laws.

As a high-schooler, she worked with retarded children at the Fernald School in Waltham, participated in the American Field Service projects and the drama club.

She thought nothing of turning in 100-page papers for her high school courses.

They called her Morning Glory only because she greeted each day with joy.

And when she applied for admission to New College in Sarasota, Fla., she wrote that a person could not enjoy life unless she were working for those who suffer.

She was at New College on Jan. 25 when four other students asked her to join them in the picket line outside the Talisman Sugar Co.

At 4:19 a.m., they were passing out leaflets to truck drivers entering the plant. And she was struck by one of the huge rigs.

Within hours, the story went across the country — a story of a young girl who died helping farm workers.

And from that moment, the calls and wires and letters began pouring into the Freeman home.

Last week, the Farm Workers announced they were starting the "Nan Freeman Farm Worker Memorial Fund".

NAN FREEMAN

In brief, it will provide financial support for young people, 18 or older, who want to serve the movement led by Cesar Chavez

Resources will be used to provide room, board and $5 a week to young people working full time for the movement.

It will also be used to provide education or training for farm workers' children.

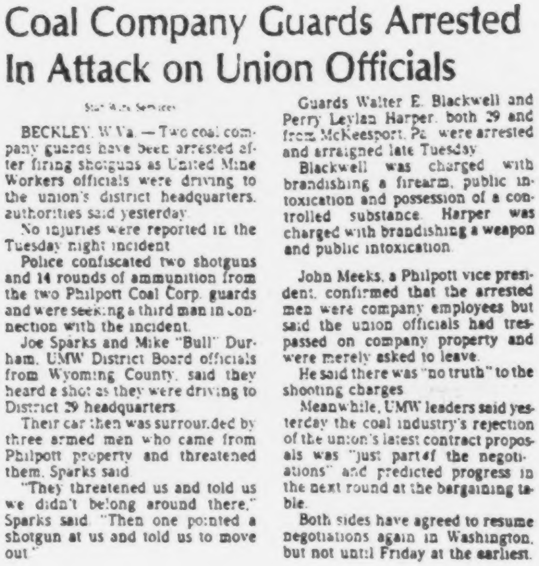
The fund will be administered by the National Farm Workers Service Center and New England contributions are being accepted by the Massachusetts Board of Rabbis, 177 Tremont st., Boston.

THE TRUTH ABOUT INCIDENTS THE RIGHT TO WORK COMMITTEE IGNORES

APPENDIX K

FACT: Two guards employed by the Philpott Coal Corporation of Beckley, West Virginia were arrested after they fired shotguns at United Mine Workers officials, according to local police. Charges included brandishing a firearm, public intoxication and possession of a controlled substance.

SOURCE: Washington Star, 4/16/81 (below)



Coal Company Guards Arrested In Attack on Union Officials

Star Wire Services

BECKLEY, W. Va. — Two coal company guards have been arrested after firing shotguns as United Mine Workers officials were driving to the union's district headquarters, authorities said yesterday.

No injuries were reported in the Tuesday night incident.

Police confiscated two shotguns and 14 rounds of ammunition from the two Philpott Coal Corp. guards and were seeking a third man in connection with the incident.

Joe Sparks and Mike "Bull" Durham, UMW District Board officials from Wyoming County, said they heard a shot as they were driving to District 29 headquarters.

Their car then was surrounded by three armed men who came from Philpott property and threatened them, Sparks said.

"They threatened us and told us we didn't belong around there," Sparks said. "Then one pointed a shotgun at us and told us to move out."

Guards Walter E. Blackwell and Perry Leylan Harper, both 29 and from McKeesport, Pa., were arrested and arraigned late Tuesday.

Blackwell was charged with brandishing a firearm, public intoxication and possession of a controlled substance. Harper was charged with brandishing a weapon and public intoxication.

John Meeks, a Philpott vice president, confirmed that the arrested men were company employees but said the union officials had trespassed on company property and were merely asked to leave.

He said there was "no truth" to the shooting charges.

Meanwhile, UMW leaders said yesterday the coal industry's rejection of the union's latest contract proposals was "just part of the negotiations" and predicted progress in the next round at the bargaining table.

Both sides have agreed to resume negotiations again in Washington, but not until Friday at the earliest.

THE TRUTH ABOUT INCIDENTS THE RIGHT TO WORK COMMITTEE IGNORES

APPENDIX L

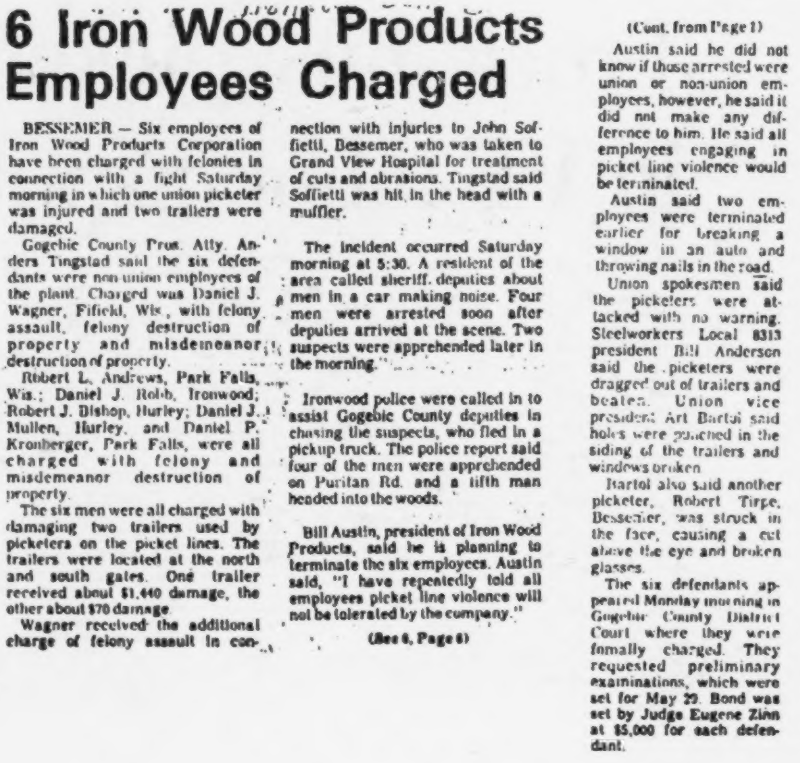
FACT: April 16, 1979. More than 70 persons were arrested and at least 30 injured as Newport News and Virginia State Police staged a series of confrontations with United Steelworkers striking the Newport News Shipbuilding Co. In the day's most serious incident, police stormed the union's strike headquarters, according to The Virginian-Pilot. Police swept pickets and bystanders alike in a fury of swinging clubs and biting attack dogs, according to Local 8888 officials. As the police rushed the union's headquarters without warning or warrant, one striker was knocked through a window. Police beat, kicked, and broke the leg of one striker as he lay unconscious on the floor, according to one eyewitness.

THE TRUTH ABOUT INCIDENTS THE RIGHT TO WORK COMMITTEE IGNORES

APPENDIX M

FACT: 5/16/81, Bessemer, MI: Five non-union replacement workers at the Iron Wood Products Corp. beat striking members of United Steelworkers Local 8313. One union member was struck from behind with an automobile muffler. Trailers being used by the picketers were damaged. The five non-union workers eventually were brought to court and ordered to pay restitution.

SOURCE: Ironwood, Michigan Daily Globe, 5/18/81 (below)
Duluth News-Tribune, 6/25/81



6 Iron Wood Products Employees Charged

BESSEMER — Six employees of Iron Wood Products Corporation have been charged with felonies in connection with a fight Saturday morning in which one union picketer was injured and two trailers were damaged.

Gogebic County Pros. Atty. Anders Tingstad said the six defendants were non-union employees of the plant. Charged was Daniel J. Wagner, Fifield, Wis., with felony assault, felony destruction of property and misdemeanor destruction of property.

Robert L. Andrews, Park Falls, Wis.; Daniel J. Robb, Ironwood; Robert J. Bishop, Hurley; Daniel J. Mullen, Hurley, and Daniel P. Kronberger, Park Falls, were all charged with felony and misdemeanor destruction of property.

The six men were all charged with damaging two trailers used by picketers on the picket lines. The trailers were located at the north and south gates. One trailer received about $1,440 damage, the other about $70 damage.

Wagner received the additional charge of felony assault in connection with injuries to John Soffietti, Bessemer, who was taken to Grand View Hospital for treatment of cuts and abrasions. Tingstad said Soffietti was hit in the head with a muffler.

The incident occurred Saturday morning at 5:30. A resident of the area called sheriff deputies about men in a car making noise. Four men were arrested soon after deputies arrived at the scene. Two suspects were apprehended later in the morning.

Ironwood police were called in to assist Gogebic County deputies in chasing the suspects, who fled in a pickup truck. The police report said four of the men were apprehended on Puritan Rd. and a fifth man headed into the woods.

Bill Austin, president of Iron Wood Products, said he is planning to terminate the six employees. Austin said, "I have repeatedly told all employees picket line violence will not be tolerated by the company."

(See 6, Page 6)

(Cont. from Page 1)

Austin said he did not know if those arrested were union or non-union employees, however, he said it did not make any difference to him. He said all employees engaging in picket line violence would be terminated.

Austin said two employees were terminated earlier for breaking a window in an auto and throwing nails in the road.

Union spokesmen said the picketers were attacked with no warning. Steelworkers Local 8313 president Bill Anderson said the picketers were dragged out of trailers and beaten. Union vice president Art Bartol said holes were punched in the siding of the trailers and windows broken.

Bartol also said another picketer, Robert Tirpe, Bessemer, was struck in the face, causing a cut above the eye and broken glasses.

The six defendants appeared Monday morning in Gogebic County District Court where they were fomally charged. They requested preliminary examinations, which were set for May 29. Bond was set by Judge Eugene Zinn at $5,000 for each defendant.

APPENDIX N

FACT: Van Buren, AK, 12/1/78: Three striking members of the American Flint Glass Workers Union, Local 717, were injured, one critically, when a truck driven by a non-striker plowed through a picket line. Police said the truck slowed down, then accelerated into a cluster of pickets who were moving out of the truck's way. One worker suffered a punctured lung, fractured skull, loss of one finger and possible impairment of one hand. The driver of the truck was charged with second-degree battery.

SOURCE: Southwest Times-Record, 12/2/78 (below)

Truck hits pickets in VB labor dispute

By KAY SPEED

Three persons were injured, one critically, Friday when a pickup plowed through a group of pickets at the Southwestern Glass Co. of Van Buren.

A Van Buren policeman, private security guard and about 40 strikers apparently witnessed the incident, which occurred about 6:43 a.m. in the driveway of the plant located in the Crawford County Industrial Park.

Police said the pickup slowed down to enter the driveway, then accelerated into a cluster of pickets who were moving out of the truck's way.

Tom Porter, striking Southwestern employee, said he was knocked down by persons trying to get out of the way of the truck. He said it was lucky the truck only struck the three men.

Injured were:

—Elmer Moses, 38, of Hackett, a skilled worker at the plant, who was listed in critical condition at Sparks Regional Medical Center.

—Delbert Junkins, 63, of Columbus, Ohio, a representative of Flint Glass Workers Union, who was listed in serious condition at Sparks.

—Robert Ludwick, 29, of Alma, an industrial worker for Southwestern, was listed in good condition at Crawford County Memorial Hsopital.

The name of the 18-year-old Alma man who allegedly ran into the three was withheld by police pending the filing of formal charges.

The suspect was released on $5,000 bond after being booked for investigation of assault with a deadly weapon with intent to kill.

Representatives of Local 717 of the glass workers union said they formed the local Oct. 2, but had been unsuccessful in attempts to negotiate a contract with Southwestern's management.

One striker said workers had been promised when the plant opened two years ago that wages and other work conditions would be competitive with those paid at Thomas Industries Inc. in Fort Smith.

He said many of the workers had left Thomas to come to Southwestern with that understanding. Recently, the man added, Dwight Morland, president of Southwestern, had failed to live up to his promise.

Morland had no comment on the incident or the strike for the press.

Striking employees said they began the strike Friday morning and are prepared to continue it until they obtain a contract from Morland.

Patrolman Gary Bell, who witnessed the incident, said he was sent to the scene about 6 a.m. when plant officials, who feared trouble, called Van Buren police.

He said about 40 picketers, 10 of them female, had gathered at the plant site when the incident occurred.

As employees arrived for work, he said pickets moved out of the way of their vehicles.

After the incident, Bell arrested two of the strikers for disorderly conduct, for their alleged yelling of obscenities at personnel inside the plant.

Strikers said the man who hit the three didn't stop his vehicle until he parked it in back of the plant. He then walked inside, where he remained until police arrived to arrest him. He returned to the plant after posting bond.

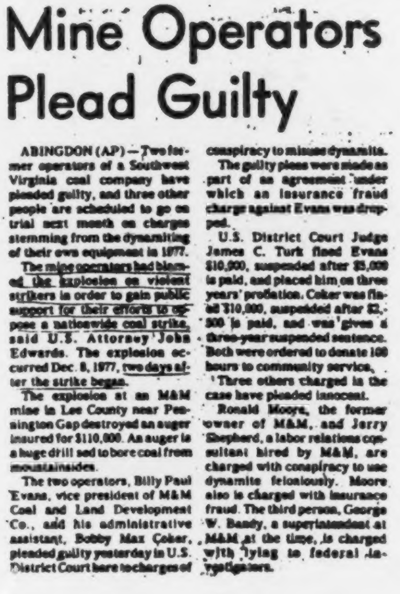
Police said late Friday there had been no further incidents at the plant.

THE TRUTH ABOUT INCIDENTS THE RIGHT TO WORK COMMITTEE IGNORES

APPENDIX O

FACT: The owner of the M&M Coal and Land Development Co. in Pennington Gap, VA was found guilty of conspiring to bomb his own mining auger, a huge drill insured for $110,000, in order to create bad publicity for striking miners. The bombing was instrumental in prompting Governor John Dalton to double the contingent of state police in the coalfields and to place the National Guard on alert, according to the Richmond Times-Dispatch, 10/18/80.

SOURCE: Richmond News Leader, 10/26/80 (below)
Richmond Times-Dispatch, 10/18/80



Mine Operators Plead Guilty

ABINGDON (AP) — Two former operators of a Southwest Virginia coal company have pleaded guilty, and three other people are scheduled to go on trial next month on charges stemming from the dynamiting of their own equipment in 1977.

The mine operators had blamed the explosion on violent strikers in order to gain public support for their efforts to oppose a nationwide coal strike, said U.S. Attorney John Edwards. The explosion occurred Dec. 8, 1977, two days after the strike began.

The explosion at an M&M mine in Lee County near Pennington Gap destroyed an auger insured for $110,000. An auger is a huge drill sed to bore coal from mountainsides.

The two operators, Billy Paul Evans, vice president of M&M Coal and Land Development Co., and his administrative assistant, Bobby Max Coker, pleaded guilty yesterday in U.S. District Court here to charges of conspiracy to misuse dynamite.

The guilty pleas were made as part of an agreement under which an insurance fraud charge against Evans was dropped.

U.S. District Court Judge James C. Turk fined Evans $10,000, suspended after $5,000 is paid, and placed him on three years' probation. Coker was fined $10,000, suspended after $2,500 is paid, and was given a three-year suspended sentence. Both were ordered to donate 100 hours to community service.

Three others charged in the case have pleaded innocent.

Ronald Moore, the former owner of M&M, and Jerry Shepherd, a labor relations consultant hired by M&M, are charged with conspiracy to use dynamite feloniously. Moore also is charged with insurance fraud. The third person, George W. Bandy, a superintendent at M&M at the time, is charged with lying to federal investigators.

THE TRUTH ABOUT INCIDENTS THE RIGHT TO WORK COMMITTEE IGNORES

APPENDIX P

FACT: Richmond, VA: Management of Great Coastal Express, Inc. sabotaged its own company trucks and then schemed to blame the damage on striking union members. The company successfully sued the union and collected $962,000 in damages--a decision that was overturned on appeal when Great Coastal employees admitted that they had lied before a federal jury and had in fact shot at, thrown bricks at, and otherwise damaged the trucks themselves.

SOURCE: Wall Street Journal, 9/1/81 (below)

Teamsters '76 Fine Was Based on Perjury By Great Coastal Employes, Judge Finds

By a Wall Street Journal Staff Reporter

WASHINGTON – A federal judge concluded that a $962,000 judgment against the Teamsters union was based largely on perjured testimony blaming the union for damages that Great Coastal Express Inc. did to its own trucks.

U.S. District Judge Robert Merhige Jr. of Richmond, Va., made the "findings of fact" at the request of a federal appeals court, through which the union is trying to get its money back from the Richmond-based truck line.

Judge Mertuge's conclusions stemmed from a July 1979 hearing at which the union contended Great Coastal employes sabotaged company trucks and then schemed to blame the damage on the Teamsters. The sabotage scheme was said to have occurred during a bitter 1971 strike. Great Coastal subsequently collected $962,000 from the Teamsters union for its alleged damage to the property.

After the 1979 hearing, Judge Merhige refused to set aside the 1976 judgment because the statute of limitations had expired. The Teamsters union appealed and a three-judge appeals court panel in Richmond ordered Judge Merhige to determine the facts of the case.

Ira Mitzner, an attorney representing the Teamsters, said, "We believe this is the first time in the history of litigation that a court has made the finding that a union was the victim of an employer's self-inflicted violence." The case will bolster claims by labor leaders that some of the strike violence attributed to unions is whipped up by employers to discredit the labor movement.

"It is possible that we mightn't get back" the nearly $1 million judgment from the appeals court, conceded Barry Levine, another Teamster attorney. But the record of alleged perjury "is very, very convincing right now," he said. The union hopes to recover over $2 million, including interest and legal fees.

In his fact-finding memorandum, Judge Merhige noted that several Great Coastal employes admitted at the July 1979 hearing that their 1972 testimony was false. For instance, the memorandum said, driver Robert Seward testified he was told to shoot at his truck, throw bricks, puncture tires and give false testimony to the federal jury that found the Teamsters liable for damages after the strike.

Contacted yesterday, Charles Estes, president of Great Coastal, reiterated his denial of the Teamster charges. "One side of the story isn't the facts," he said. "Our lawyers have advised me that while it's under litigation, not to discuss it. But the Teamsters are telling lies or half-truths by not explaining the situation."

THE TRUTH ABOUT INCIDENTS THE RIGHT TO WORK COMMITTEE IGNORES

APPENDIX Q

--Martinez, CA, Jan. 5, 1969. Richard Jones, 50, was run over by a Standard Oil tanker truck as he picketed the entrance to Standard's Avon transfer station. Jones later died of his injuries. Police considered the incident accidental and did not bring charges against the driver. But four days later two Martinez policemen were knocked down and injured by another truck that reportedly rammed through picket lines without slowing down, according to the San Francisco Chronicle. In this case the driver was charged with assault with a deadly weapon. And on Jan. 17 police arrested another truck driver for knocking down a picketer with his truck and then threatening her with a gun, according to the Chronicle.

--Brownsville,KY, July 13, 1972. Eugene Hampton, 27, father of three, was shot to death as he served on strike duty at the Kellwood Co. Arrested and charged with murder was Harvey Gonterman, husband of one nonstriking employee and son of another. Gonterman was tried and acquitted of the murder. No other suspect was arrested, according to the Edmonson County Cricuit Court Clerk's Office.

--Tracy, CA, Aug. 6, 1976. Norman Ray Lewis, 33, father of five, was picketing the Handy Man distribution center when a truck driven by a company supervisor ran over and killed him. The driver was charged with felony vehicular manslaughter. Certain testimony suggested that the killing was intentional, but the jury believed it was accidental and the supervisor was acquitted, according to the Stockton Record. A settlement of $190,000 was made to Lewis' family in a civil suit against Handy Man.

--Vacaville, CA, August 21, 1978. Randy Hills, 24, was picketing on the shoulder of a road near the Lucky Stores distribution center when he was struck and killed by a car driven by a replacement worker leaving the plant. The nonstriking worker was driving at 55 mph with his headlights turned off when he hit Hills at 8:20 p.m., according to the San Francisco Examiner. The driver did not stop but continued driving home, where he later was arrested and charged with felony hit and run and manslaughter. But the charges were dropped and the incident ruled accidental.

APPENDICES R-W:

THE TRUTH ABOUT THE SIX INCIDENTS CITED IN TESTIMONY OF THE NATIONAL RIGHT TO WORK COMMITTEE BEFORE THE SENATE JUDICIARY CRIMINAL LAW SUBCOMMITTEE, DEC. 10, 1981

APPENIDX R

Wesco Electrical Co.
Greenfield, MA
Anita DiLuzio

CHARGE: "Mrs. DiLuzio was dealt a lesson in terror by militants from the International Brotherhood of Electrical Workers Union."

FACT: The Right To Work Committee cannot get even the basic outlines of the case straight. The union involved is the International Union of Electrical, Radio and Machine Workers, not the IBEW. We might note that this is not the first time Right To Work has libeled a union in this manner. In their publication Free Choice, they told a story about problems with United Mine Workers Local 5089 in Wallace, Idaho. UMWA doesn't represent any miners in Wallace -- or in Idaho, for that matter.

CHARGE: "The DiLuzios found local authorities to be extremely reluctant to get involved."

FACT: Greenfield police on many occasions responded to calls from Wesco for protection of nonstrikers. "All calls we received we responded to as soon as humanly possible," said Greenfield Police Captain David Wood. On some occasions, as many as 25 officers monitored the picket line. Arrests were made, and union members made restitution to owners of damaged vehicles on at least three occasions.

CHARGE: "Mrs. DiLuzio returned home to find one of her daughters had been hit by a rock during a rock-and-bottle assault on the family home -- it took three frantic phone calls before the local police would even send a squad car."

FACT: Greenfield Police Captain Wood repeats that the department responded as soon as possible to this call. DiLuzio, with the backing of the Right To Work Committee and Wesco's attorney, filed a civil lawsuit against the IUE Local 274 and the International for trespass, assault, and intentional infliction of emotional distress, and this alleged incident is not even mentioned in their complaint.

APPENDIX S

Mary Helen Coal Company
Bellfry, KY

CHARGE: "Four drivers were shot."

FACT: Although four people were shot, the Right To Work Committee ignores the fact that one of those shot was a union picketer, Raymond H. Gannon, a member of Local 5737, District 30, of the United Mineworkers. As a result, Gannon was unable to work from April 22, 1981 until November 2, 1981. He suffered severe nerve damage in his arm and according to his wife, still cannot pick up a cup of coffee using that arm. Gannon was unarmed and believes that the driver of the second truck shot him.

CHARGE: When furnished the license numbers of three vehicles that carried the guns, they refused to conduct an investigation.

FACT: When Kentucky State Police Detective Robert Forsythe arrived at the scene of the shooting, he observed company people standing around the trucks, some of whom were wearing pistols as sidearms and one of whom had a shotgun. None of the pickets were observed to be armed. He was told by one of the company people that the pickets had thrown their weapons into a car bearing Ohio license plate number CJC 387 which allegedly had left the scene. A check on that license number was run by Alcohol, Tobacco and Firearms Agent McAllister but it was determined that the car was registered to the daughter of the Chief of Police, East Liverpool, Ohio. No other license numbers were provided.

The investigation is not concluded.

APPENDIX T

RUR Industries
North East, PA
Ron and Karen Yokum

CHARGE: "A Molotov cocktail was hurled at the side of the Yokum's home and burst into flames."

FACT: According to Steelworkers Local 9051 Rep. Jay Dever, the bomb was hurled from a passing car, and picketers ran across the street to the Yokum's home and put out the fire.

CHARGE: "Ron Yokum has been attacked by a man slinging a baseball bat at a window screen separating Mr. Yokum from his attacker, who was bashing in a window in the Yokum's home."

FACT: Three people were arrested in connection with this incident, according to local authorities. One was from New York and was not associated with the strike. Two await trial, the third was sent to jail and is paying restitution for damage to a vehicle.

CHARGE: "Even their three-year-old daughter has not escaped unscathed. At one point, a wine bottle was thrown at her which shattered, splattering glass onto her leg."

FACT: The individual arrested for this act was not a union member. When the complaint was filed, the description seemed to match a man already in jail for public drunkenness. He was positively identified as the person who threw the bottle.

CHARGE: "Repeated pleas for help from local law enforcement officials have proved to be of no avail."

FACT: North East Police have responded every time they have received a complaint. At least 25 arrests have been made of pickets and nonstriking employees. Numerous arrests have been made at the Yokum residence.

The Erie County Sheriffs Department also has responded on several occasions. Some violence may be attributed to the presence of hired security guards, which Chief Sheriff's Deputy Robert Michael referred to as "storm troopers." One such firm, which was not licensed to operate in Pennsylvania, was thrown out. These guards carried automatic weapons and converted a school bus into an armored vehicle for transport of nonstrikers across the picket line. RUR then brought in Nuckols Associates, a notorious union-busting security firm. Since Nuckols left on September 7, no incidents have occurred, according to Dever.

ADDITIONAL INFO: On August 27 at 1:00 a.m., 30 nonstrikers attacked the four pickets on duty. Three escaped; the fourth, Alex Lazar, was held down and beaten with a pipe. Nonstrikers attempted to break his arms. Two persons were arrested for rioting and assault, according to Dever. Sheriff's Deputy Michael confirms that a picket was injured; it was following this incident that he brought his entire department to the picket line.

APPENIDX U

National Rejectors, Inc.
Hot Springs, AK
Deanna Ussery

CHARGE: "Late one night Ussery's home was inundated by shotgun blasts that peppered the bed of her eight-year-old daughter. By a stroke of fortune, the little girl was away overnight."

FACT: During Ussery's Right-To-Work-backed lawsuit against the union, she testified that she does not know who fired into her house. There was no "stroke of fortune" involved; Ussery's daughter was living with her father. Ussery and the child's father were, at the time, waging a serious child custody battle. Noting that he believed that Ms. Ussery "presented a physical danger to the children," the judge granted custody to the father. Ussery charged the judge--a respected jurist--with being "bought off" by her ex-husband.

(See also Appendix C for information regarding the National Rejectors case.)

APPENDIX V

J.T. Fritz and Sons
Lutherville, MD
Donald T. Fritz

CHARGE: "Fritz was attacked and viciously beaten."

FACT: The person named in connection with this incident in a civil suit against Local 16 was not a union member; he was a non-union employee working on permit. And according to the testimony in the suit, the "vicious beating" amounted to an exchange of words and a grabbing of Fritz by the collar. Fritz won his suit and was paid a fine by the union.

APPENIDX W

Electro-Harmonix Co.
New York, NY
Mike Matthews

CHARGE: "Most Electro-Harmonix employees, satisfied with their jobs, refused to sign the (union authorization) cards."

FACT: Some employees, dissatisfied with low wages, did sign authorization cards. But many others were afraid to do so. Employees told union officials that Matthews had threatened them with reprisals, including discharge, if they supported the union. Accordingly, the union filed a charge of unfair labor practices with the National Labor Relations Board. The NLRB found that Electro-Harmonix had indeed "restrained and coerced" workers' rights to organize.

CHARGE: "Eight thugs beat, kicked, and punched (Matthews) from all sides."

FACT: Matthews showed up at the picket line and ordered striking workers to return to the factory. As he physically grabbed one of the workers and directed her to return to the plant, a union agent attempted to assist the worker. Matthews engaged that agent in a pushing match. If it seems incredible that Matthews could fend off eight union agents singlehandedly without injury, it is because no such incident ever occurred.

CHARGE: "(Nonstriking workers) were forced to run a 100-yard gauntlet...behind flimsy police barriers."

FACT: From August 11 through August 25, the last day of picketing, at least 15 police officers were stationed outside the factory at all times, keeping picketers behind barricades, patrolling the area, and escorting nonstrikers to the plant. On some occasions police outnumbered the picketers. Police remained stationed in front of the factory for weeks after the picketing ended. Television coverage shows this conclusively.

CHARGE: "Employees who refused to sign the union cards were pelted with eggs and beaten with sticks."

FACT: The individuals who instigated this incident, who were not strikers, were clearly identifiable in the television news film of the incident, but the television reporters made no effort to do so, being content to attribute the incident to "union hoodlums."

APPENIDX X

THE TRUTH ABOUT THE INCIDENT CITED BY THE ASSOCIATED BUILDERS AND CONTRACTORS, INC.

H.K. Johnson Corp.
Snap-On Tools Construction Site
Toledo, OH

CHARGE: "No attempt was made to organize Johnson's employees."

FACT: Because Johnson's tactic was to use out-of-state workers, Toledo union organizers had little hope of organizing them. Rather, the unions asked only that Johnson pay the standard wages prevailing in the Toledo area. When Johnson refused, union members picketed for fair wages, not for representation.

CHARGE: "A policeman from the Toledo Police Department watched the (alleged union wrongdoing) and apparently made no call to the police department in order to curb the violence."

FACT: Toledo Police Department records show that there was no officer on the site at this time, according to Captain Patrick McNulty.

CHARGE: "Recognized in the group of men were business agents from several of the building trades unions. As the men stormed on to the job, they demolished all forms that had been constructed..."

FACT: Neither Johnson nor his agents filed any charges with the police on this allegation, much less charges or a lawsuit naming specific individuals.

CHARGE: "Through the next several days, 25 to 100 pickets ringed the job site...In the face of over 100 pickets surrounding the job site..."

FACT: Pickets were enjoined from picketing except at one location 50 feet from the job site. The site was never surrounded.

CHARGE: "(Police) told Johnson's employees and the subcontractors that if they had any problems all they would have to do would be to telephone the police...The police were informed there was no telephone at the job site."

FACT: The private security guards at the site had two-way radios with which to contact police.

CHARGE: "...The state court injunction was of little or no use because of the inability of the Toledo Police to enforce the injunction or unwillingness to enforce the injunction..."

FACT: On at least three occasions, Lucas County Sheriffs reported to the Snap-On site to read and enforce the injunction limiting picketing, according to Chief Robert Gray. When the Sheriff's Department's limited personnel proved inadequate, Toledo Police were called in to assist. On at least one occasion every Toledo Police patrol car save two were called to the site, according to union attorneys.

Upon arrival at the site, police told picketers to break up the picket line. Picketers refused and were arrested peacefully. On April 11 Toledo Police arrested 25 persons for interference with a police officer, and on April 27, 37 more arrests were made, according to Toledo Police Captain Patrick McNulty. Lucas County Sheriffs and Toledo Police thus were able and willing to enforce the court injunction.

THE NEWSPAPER GUILD
1125 FIFTEENTH STREET, N.W., ROOM 550
WASHINGTON, D.C. 20005 202/296-2990

July 3, 1984

TO: Members of the Senate Judiciary Committee

FROM: Charles A. Perlik, Jr., President

Delegates to TNG's 51st Annual Convention meeting June 18-22 called for defeat of amendments to the Hobbs Act as proposed in the bill sponsored by Sen. Charles E. Grassley.

I urge you to consider the views of the convention as expressed in the enclosed resolution and to reject this latest effort to impose federal criminal penalties on strikers involved in picket-line violence.

CAP/dc
opeiu2afl-cio

Enclosure

Affiliated with American Federation of Labor and Congress of Industrial Organizations, Canadian Labour Congress, International Federation of Journalists

INTERNATIONAL CHAIRPERSON: HARRY S. CULVER, *Wire Service Guild*

PRESIDENT: CHARLES A. PERLIK, JR.

SECRETARY-TREASURER: CHARLES DALE

VICE PRESIDENTS AT LARGE

WILLIAM T. DAVIS, *San Jose*
ROBERT C. HOLT, JR., *St. Louis*
CAROL McGARVEY, *Philadelphia*
DAVID M. MULCAHY, *New York*
MARIE SHELLOCK, *Youngstown*
STANLEY SOUZA, *Hawaii*

REGIONAL VICE PRESIDENTS

THOMAS HILTZ, *Boston*
FAYE McCRACKEN, *Memphis*
RICHARD M. PEERY, *Cleveland*
LARRY D. HATFIELD, *San Francisco-Oakland*
PETER McLAUGHLIN, *New York*
LEE CLIFFORD, *Canadian Wire Service*
ROGER L. STONEBANKS, *Victoria*

THE HOBBS ACT AMENDMENT

Congress's right wing and the anti-union National Right to Work Committee have renewed their efforts to amend the Hobbs Act so that strikers involved in picket-line violence would be subject to prosecution under the federal anti-extortion statute.

Amendments to the Hobbs Act currently before the Senate Judiciary Committee in a bill sponsored by Sen. Charles E. Grassley (R-Iowa) would impose federal criminal penalties against persons who engage in violence or threaten its use in the conduct of a "legitimate business or labor dispute." But the bill is clearly intended to bring only strikers, not employers or strikebreakers, under the stiff penalties embodied in the federal statute.

Like its predecessors, the Grassley bill, S. 462, would overturn a 1973 Supreme Court ruling in which the court held that the Hobbs Act's prohibition against extortion was intended to apply to criminal violence, not to misconduct that might occur in the prosecution of a legal strike for better working conditions.

Any unlawful acts committed by strikers are best handled under state and local statutes along with those committed by employers and their agents.

The Newspaper Guild's Convention calls on the Senate Judiciary Committee to reject the Grassley bill and any that might follow in its image.

Adopted by The 51st Annual Convention of
The Newspaper Guild (AFL-CIO, CLC)
June 18-22, 1984, San Juan, Puerto Rico

opeiu2afl-cio
June 1984

THE NEWSPAPER GUILD
1125 FIFTEENTH STREET, N.W., ROOM 550
WASHINGTON, D.C. 20005 202/296-2990

July 3, 1984

TO: Members of the Senate Judiciary Committee

FROM: Charles A. Perlik, Jr., President CAP

Delegates to The Newspaper Guild's 51st Annual Convention meeting June 18-22 called for the prohibition of law enforcement officials impersonating reporters, doctors, lawyers or clergy and, in doing so, urged rejection of a proposal that would give the practice legal sanction.

I urge you to consider the convention's views as expressed in the enclosed resolution.

CAP/dc
opeiu2afl-cio

Enclosure

Affiliated with American Federation of Labor and Congress of Industrial Organizations, Canadian Labour Congress, International Federation of Journalists

INTERNATIONAL CHAIRPERSON: HARRY S. CULVER, *Wire Service Guild*

PRESIDENT: CHARLES A. PERLIK, JR

SECRETARY-TREASURER: CHARLES DALE

VICE PRESIDENTS AT LARGE

WILLIAM T. DAVIS, *San Jose*
ROBERT C. HOLT, JR., *St. Louis*
CAROL McGARVEY, *Philadelphia*
DAVID M. MULCAHY, *New York*
MARIE SHELLOCK, *Youngstown*
STANLEY SOUZA, *Hawaii*

REGIONAL VICE PRESIDENTS

THOMAS HILTZ, *Boston*
FAYE McCRACKEN, *Memphis*
RICHARD M. PEERY, *Cleveland*
LARRY D. HATFIELD, *San Francisco-Oakland*
PETER McLAUGHLIN, *New York*
LEE CLIFFORD, *Canadian Wire Service*
ROGER L. STONEBANKS, *Victoria*

IMPERSONATING REPORTERS

The Justice Department, the FBI and the Internal Revenue Service have been operating under guidelines that make it permissible for their agents to pose as reporters, as well as doctors, lawyers and clergymen.

Now a bill, S. 804, that would give this practice the sanction of law is before the U.S. Senate.

The FBI and IRS require agents to get high-level approval to pose as reporters, and they say no agent has yet been given such authorization. But S. 804, a bill whose prime purpose is to restrict undercover activities, would allow infiltration of news organizations or impersonation of reporters if there is "probable cause" to believe government agents are on the trail of specific crimes.

But, as news-industry representatives have pointed out, the perniciousness of the practice does not depend upon its frequency. Once news sources have reason to believe a police badge may lie behind a reporter's press card, the basis for confidence is destroyed.

What is needed is not a charter governing the circumstances under which the press can be impersonated. What is called for is a prohibition against impersonating those who, in the words of a civil-liberties attorney, "can't perform their functions without the confidentiality of the people they're working with."

The Newspaper Guild Convention urges the Senate Criminal Law Subcommittee and the full Judiciary Committee to reject S. 804's authorization of such impersonation and to incorporate instead a prohibition against it.

Adopted by The 51st Annual Convention of
The Newspaper Guild (AFL-CIO, CLC)
June 18-22, 1984, San Juan, Puerto Rico

opeiu2afl-cio
June 1984

Issue Briefing Paper

National Right to Work Committee

Date: January, 1984

Subject: Union Violence

> The United States has reached "...a state where they [unions] have become uniquely privileged institutions to which the general rules of law do not apply. They have become the only important instance in which governments signally fail in their prime function -- the prevention of coercion and violence."
>
> F.A. Hayek

Morenci, Arizona, 1983: Chandra Tallant, the three-year-old daughter of a nonstriking Phelps Dodge employee who dared exercise his Right to Work, was shot in the head when union militants allegedly fired shots into her bedroom during union violence in strike-torn Arizona.

No convictions for union violence.

Lancaster, Pennsylvania, 1983: Robert S. Wohlsen, Sr., president of a nonunion construction company, required brain surgery as a result of a brutal attack by union picketers.

No convictions for union violence.

Maui, Hawaii, 1983: Walter Mungovan, a combat veteran, a carpenter and a successful contractor, was bullied, threatened, vandalized and literally put out of business -- simply because he refused to force his employees to join a union. Today, after testifying truthfully about union threats, Mungovan lives in exile under the anonymity of the U.S. Government's Federal Witness Protection Program because of a contract reportedly placed on his life.

No convictions for union violence.

In fact, despite extensive evidence compiled by federal agents and a federal grand jury indictment against five union officials, a U.S. District Court rules that federal labor racketeering laws don't even apply to acts of union violence and extortion during the course of "legal" strikes.

Nobel laureate F.A. Hayek said, the United States has now reached "a state where labor unions have become uniquely privileged institutions to which the general rules of law do not apply. They have become the only instance in which governments signally fail their prime function -- the prevention of coercion and violence."

The spreading plague of unpunished union violence has been caused, not primarily by a failure to enforce the law, but by deficiencies in the law itself.

Federal labor law grants union officials a whole series of special privileges, two of which, together, naturally lead to increased union violence:

1. The power to control workers: Under the National Labor Relations Act, union officials are given inordinate powers to control the lives of individual workers, including the power to force workers to support the union and its goals as a condition of employment.

2. Low accountability for criminal acts: Sections of the Norris-LaGuardia Act, and the Supreme Court's interpretation of the Hobbs Act, are two key examples of federal laws which effectively grant union officials near total immunity from federal prosecution on behalf of victims of union violence and extortion. Wide-ranging agency laws and federal proscriptions against extortion currently make broad exceptions for unions and union officials.

The first of these special privileges, the concentration of power in the hands of union officials, opens the door for union officials to use strong-arm tactics against workers. The second, the exemption of union officials and their agents from accountability for criminal acts, assures union officials that they will not be called to account for acts of union-related violence and extortion. And the combination of maximum power with minimum accountability is an inescapable formula for violence.

Compulsory Unionism: The Power to Control Workers

"It is difficult," said respected novelist Sherwood Anderson, "if you are made to stand out a bit from the mass, not to assure yourself that it is all due to some special virtue in yourself. All power of money or place therefore brings a kind of corruption almost inevitably."

While the seductive influence of power tends to corrupt almost all who possess it, the unchecked powers granted to union officials have given rise to corruption and violence on a grand scale.

Section 8(a)(3) of the National Labor Relations Act grants union officials the power to force workers to join or support the union as a condition of employment even if the worker voted against union representation. Workers are faced with a simple ultimatum: pay dues to the union official or be fired.

Once union officials have gained this power, they no longer need concern themselves with earning worker loyalty. Compulsory unionism powers permit them to set aside the mantle of service and take up the scepter of tyranny.

This point was stated all too clearly by George Harrison, Grand President of the Brotherhood of Railway Clerks, arguing to compulsory unionism powers before a Senate committee in 1950.

Without powers of compulsion, said Harrison, union officials would be unable to "discipline" union members "because of the voluntary character of the membership."

But with the package of special powers which the law grants to union officials, they are able to keep workers strictly in line. And having become accustomed to this position of supremacy, they seldom display reluctance to use any means -- including violence -- to control workers.

Watergate prosecutor Archibald Cox underscored this point when he said: "Individual workers who sue union officers run enormous risks, for there are many ways, legal as well as illegal, by which entrenched officials can 'take care of' recalcitrant members."

Union Legal Immunities: Invitations to Violence

The despotic tendencies of union officials vested with compulsory unionism powers are aggravated by a second special privilege: *de facto* immunity from prosecution on union violence and extortion charges.

The following discussion will focus on five key factors which have given rise to this special union immunity.

1. The law grants unions and their officials an almost free hand in the use of whatever slanderous and libelous language they deem necessary to achieve their goals.

Most Americans are restrained by law from using language so violent and vituperative that it incites those around them to violence. But that law does not apply to union officials. In the words of Supreme Court Justice Thurgood Marshall, "Federal law gives unions license to use intemperate, abusive, or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point."

2. Federal law makes it almost impossible for a union to be held responsible for the violent acts of its officers or members.

Most American organizations and citizens are subject to wide-ranging agency laws, which hold organizations responsible for the actions of their agents (i.e., officials, employees, and members). Whenever the agents' unlawful acts are "reasonably foreseeable," the organization must assume responsibility.

But those laws do not apply to unions either. The Norris-LaGuardia Act of 1932 virtually exempted unions from the provisions of agency laws. In fact, even direct violence by union members does not make the union treasury liable for damages.

Norris-LaGuardia offers total immunity to unions unless the victim of union violence can clearly prove a direct order or authorization by the union for each act of violence. Thus, union officials are virtually free to incite violence against helpless workers by any means short of a direct order or authorization.

3. The Supreme Court's interpretation of the Hobbs Act grants union officials immunity from federal prosecution for acts of violence and extortion -- as long as those lawless actions are carried out in order to achieve "legitimate union objectives."

The original purpose of the Hobbs Act was to amend the Anti-Racketeering Act of 1934 to make union officials liable for union-related acts of extortion in interstate commerce. In the words of the bill's sponsor, Congressman Samuel Hobbs, "Crime is crime no matter who commits it; and robbery is robbery and extortion, extortion, whether or not the perpetrator has a union card."

Despite this clear expression of congressional intent, in 1974 the U.S. Supreme Court ruled in U.S. v. Enmons that the Hobbs Act only prohibited union extortion when it was used to achieve "wrongful" objectives "and not where unlawful violence has been used to gain legitimate union objectives, such as service or higher wages." In effect, the court's ruling has left union officials free to commit violence in pursuit of "legitimate union objectives" -- whatever they may be.

4. Local government officials, overawed by powerful union chiefs, are often extremely reluctant to antagonize these potentially dangerous political adversaries, resulting in a de facto legal immunity for union officials. The victim's appeal to the local police, city hall, or even state authorities often goes unheard for this reason.

A 1975 incident in Alaska illustrates this point: A powerful Teamsters boss shut down the Alaska Pipeline in order to drive a non-Teamsters trucking firm off the job. The shutdown resulted in massive union theft of tools and equipment. But the police -- who were also members of the Teamsters union -- refused to take any action against the thieves. In the words of former Alaska Governor Jay Hammond, they were "Teamsters first and police second."

5. The fifth factor, fear on the part of victimized workers, follows naturally from the preceding four. Workers know that union officials often get away with blatant acts of violence. Rightly assuming that the union officials will probably escape justice once again, they choose to drop the matter and nurse their wounds in silence. In so doing, they contribute to the growing pattern of union legal immunity.

The Pick-Handle Closed Shop

Invested with special power to exercise control over individual workers and exempted from any significant responsiblity for the actions of their agents, union officials are free to make extensive use of violence and intimidation to further two basic goals -- force workers to join the unions, and keep union members in subjection.

Because of these legally sanctioned privileges, union officials in compulsory unionism states and Right to Work states alike can compel workers by threat of violence to pay tribute to the union. Not even state Right to Work laws offer ironclad protection against the "pick-handle closed shop."

Any legislation, therefore, that seeks to genuinely restore freedom of choice to American workers, must also address the problem of union violence spawned by special powers and immunities in the hands of union officials.

An Important First Step: Restore the Congressional Intent of the Hobbs Act

The Supreme Court's 1973 Enmons decision, which gutted the Hobbs Act of its prohibitions against union officials' extortion, enraged countless Right to Work supporters -- including many Senators and Congressmen.

As we have noted, the Court's Enmons ruling set union officials above the federal prohibitions against union extortion, so long as the extortion was used to achieve a "legitimate" objective. In practical terms, the high court granted union chiefs legal license to use almost whatever means necessary to achieve union goals. Since that ruling, union officials have repeatedly used violence, destruction and threats to foist upon workers one of their top "legitimate" goals: compulsory unionism.

Currently in Congress, Right to Work supporters are working to enact legislation which would reverse the effect of the Enmons ruling and require union officials to bear full responsibility for their acts of violence and extortion, just like all other Americans.

U.S. Sen. Charles Grassley (R-Iowa) and Rep. J. Kenneth Robinson (R-Va.) mounted initiatives in 1983 to ensure that federal criminal code revision bills in the Senate (S. 462) and the House (HR 287) contain clear-cut prohibitions against extortion by union officials.

On March 23, 1983, this crucial legislation gained ground when victims of compulsory unionism violence recounted their painful experiences before the Senate Separation of Powers Subcommittee chaired by U.S. Sen. John East (R-N.C.).

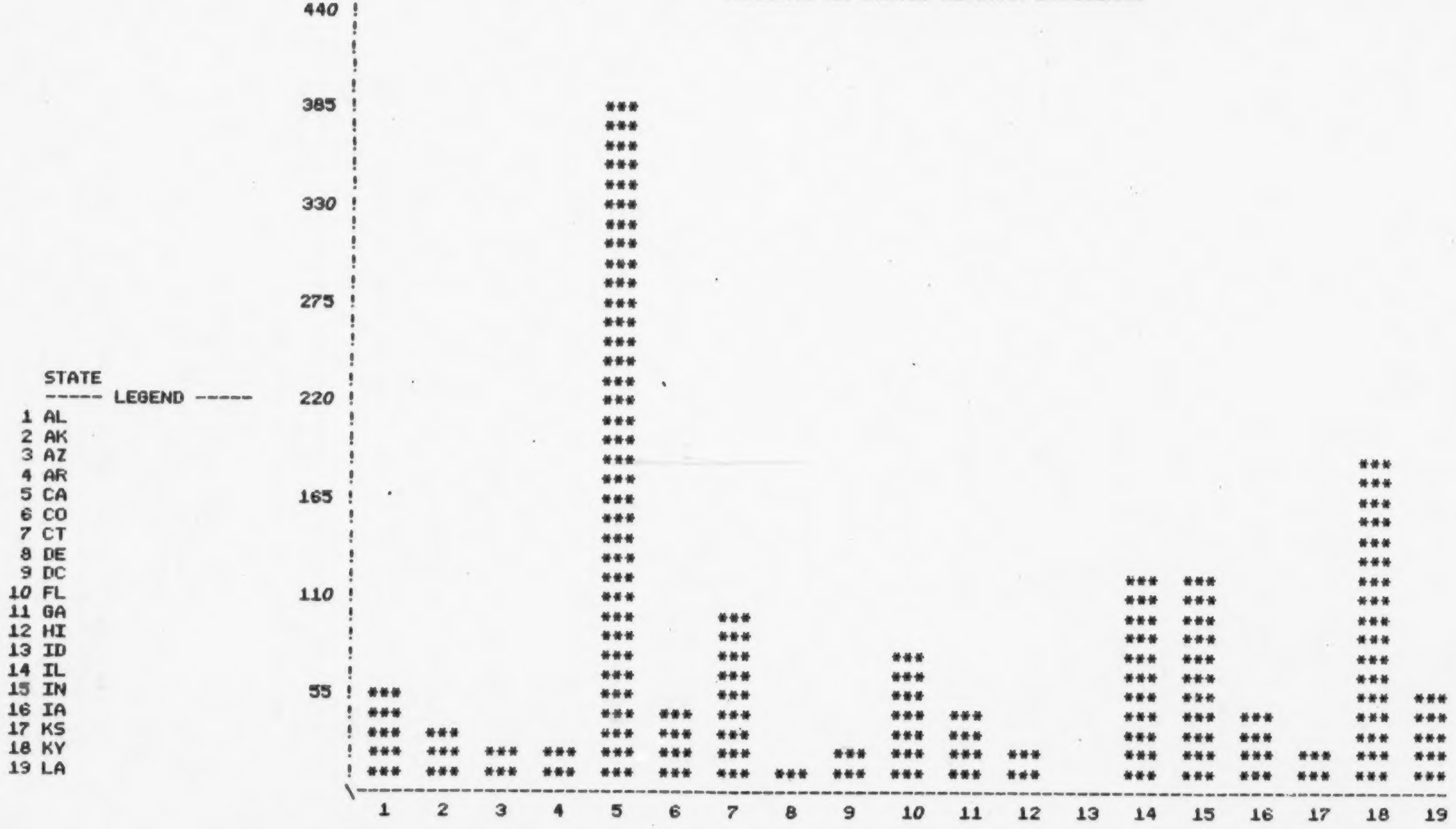
Right to Work supporters then achieved an historic step forward, when, on July 19, 1983, the Grassley Amendment was approved by the subcommittee and forwarded to the full Senate Judiciary Committee -- marking the first time a legislative body of Congress voted to revoke Big Labor's unique license to commit extortionate violence.

In October, Senate Judiciary members heard graphic, firsthand testimony from victims of union violence who came to Washington to plead for legislative reform that would subject union officials to the same anti-extortion laws which already cover all other Americans.

Now, armed with historic subcommittee approval of the anti-violence measure, overwhelming public support, and a new makeup of the full Senate Judiciary Committee, Right to Work forces are marshalling a comprehensive organizational campaign to secure final passage of the Hobbs Amendment.

This, however, is only the first step. Congress must face also the tasks of eliminating other special privileges and immunities which have given rise to the "pick-handle closed shop": union immunity from prosecution for the illegal acts of its agents, and finally, the union officials' legally sanctioned power to force workers to pay dues to an unwanted union.

VIOLENCE IN STATES ALABAMA-LOUISIANA



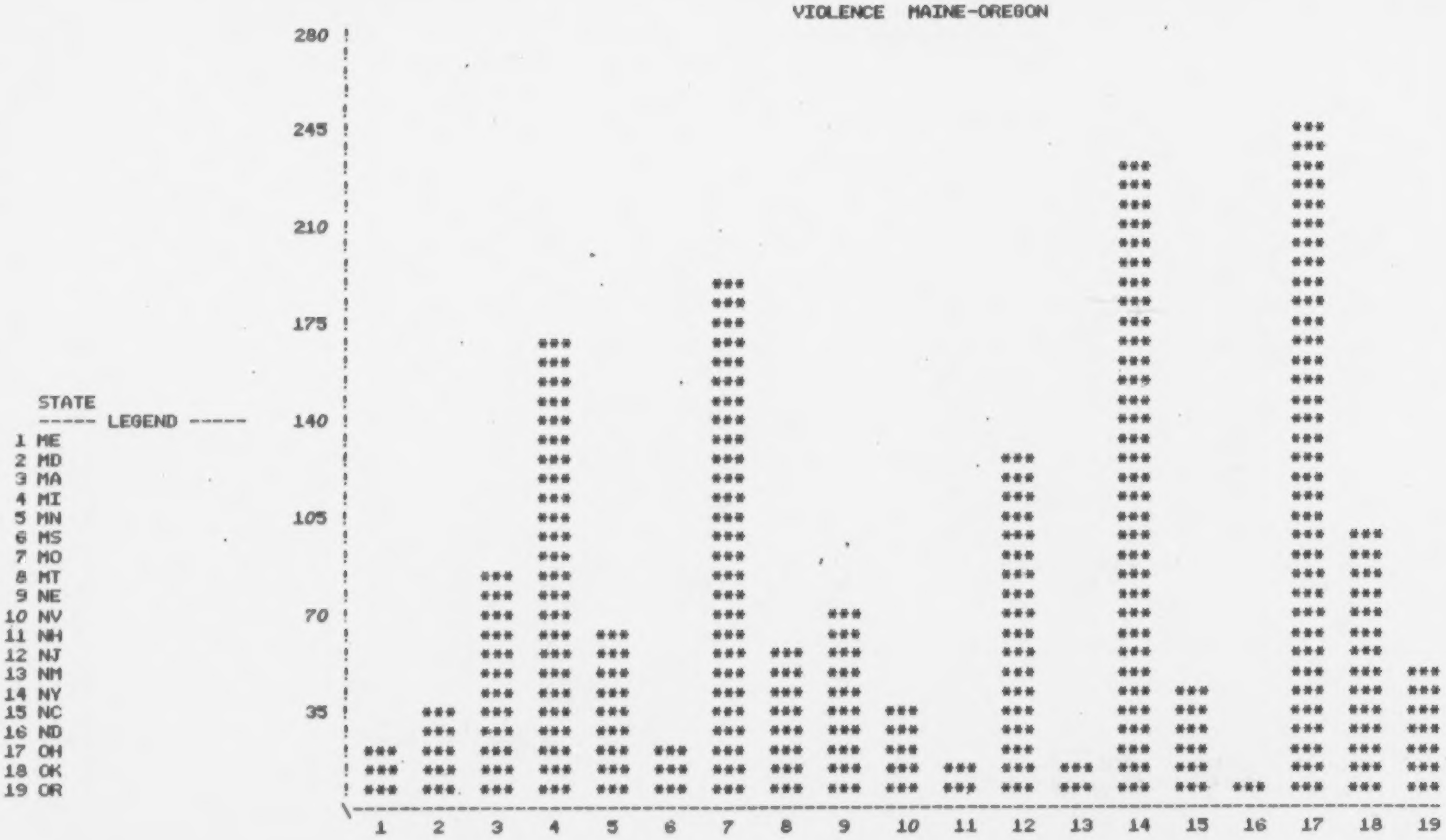
```
                                                         NATIONAL RIGHT TO WORK FOUNDATION
                                                               SPRINGFIELD, VIRGINIA
DATASCAN PROGRAM
PAGE     1

                                   PROCESSING STATISTICS

BAR                           TOTAL          TOTAL                            **RANGE**
NO.        LEGEND            RECORDS         VALUE                LEFT                    RIGHT
--- -------------------      -------    -----------------  ----------------     -----------------
01  AL                            55                   55                         AL
02  AK                            32                   32                         AK
03  AZ                            22                   22                         AZ
04  AR                            20                   20                         AR
05  CA                           381                  381                         CA
06  CO                            41                   41                         CO
07  CT                            99                   99                         CT
08  DE                            10                   10                         DE
09  DC                            15                   15                         DC
10  FL                            70                   70                         FL
11  GA                            37                   37                         GA
12  HI                            19                   19                         HI
13  ID                             0                    0                         ID
14  IL                           120                  120                         IL
15  IN                           114                  114                         IN
16  IA                            40                   40                         IA
17  KS                            15                   15                         KS
18  KY                           182                  182                         KY
19  LA                            54                   54                         LA


                             3861  RECORDS PROCESSED.


                             1326  RECORDS USED IN GRAPH.
```


VIOLENCE MAINE-OREGON
STATE
----- LEGEND -----
1 ME
2 MD
3 MA
4 MI
5 MN
6 MS
7 MO
8 MT
9 NE
10 NV
11 NH
12 NJ
13 NM
14 NY
15 NC
16 ND
17 OH
18 OK
19 OR
280
245
210
175
140
105
70
35
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

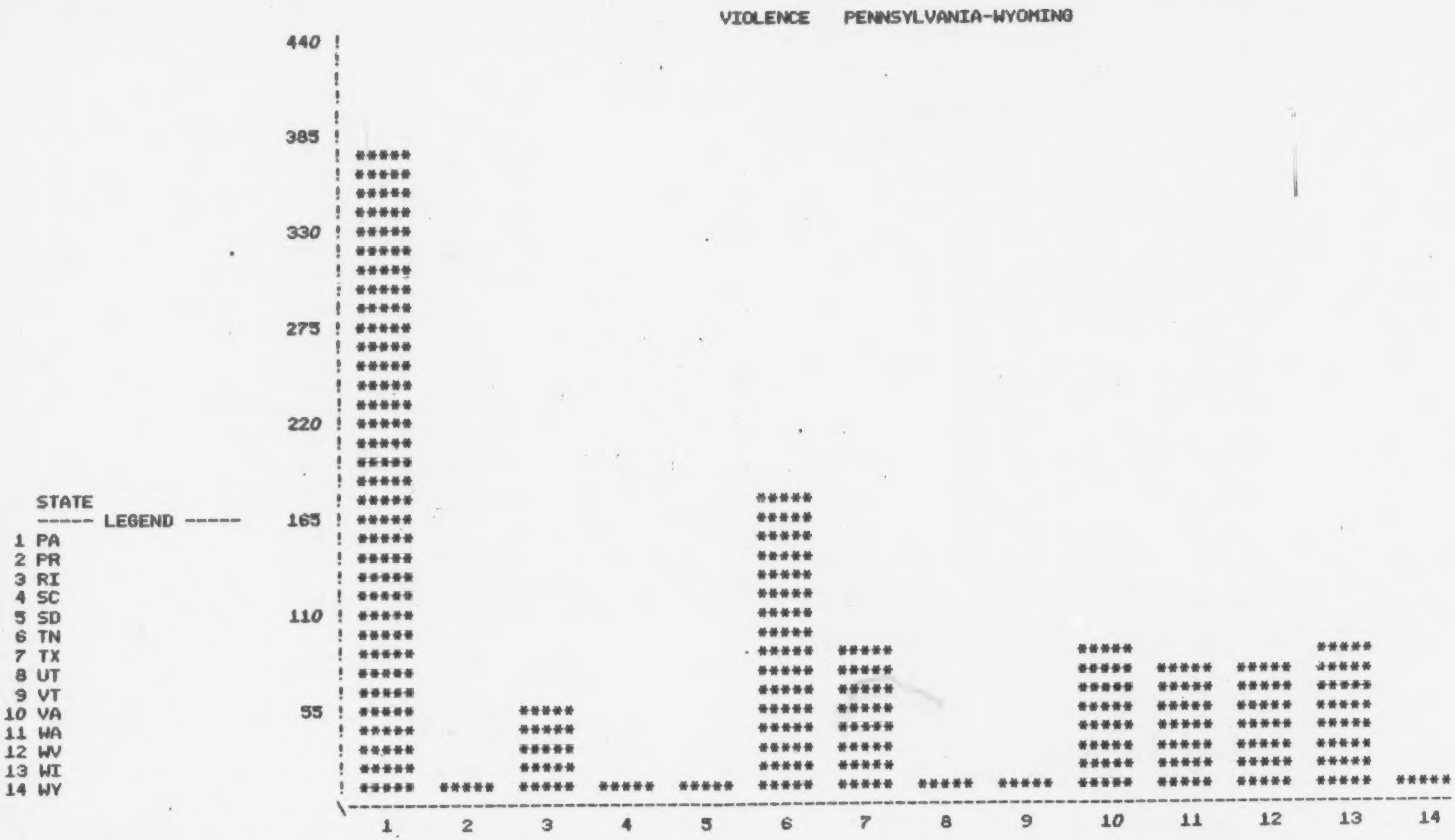
```
                                                    NATIONAL RIGHT TO WORK FOUNDATION
                                                        SPRINGFIELD, VIRGINIA
  DATASCAN PROGRAM
  PAGE     1


                                            PROCESSING STATISTICS

  BAR                            TOTAL          TOTAL                                   **RANGE**
  NO.       LEGEND              RECORDS         VALUE                 LEFT                         RIGHT
  --- -----------------------  -------  -------------------  -------------------   -------------------
  01  ME                            20                   20                          ME
  02  MD                            30                   30                          MD
  03  MA                            82                   82                          MA
  04  MI                           162                  162                          MI
  05  MN                            61                   61                          MN
  06  MS                            16                   16                          MS
  07  MO                           184                  184                          MO
  08  MT                            53                   53                          MT
  09  NE                            65                   65                          NE
  10  NV                            35                   35                          NV
  11  NH                            11                   11                          NH
  12  NJ                           126                  126                          NJ
  13  NM                            11                   11                          NM
  14  NY                           226                  226                          NY
  15  NC                            40                   40                          NC
  16  ND                             1                    1                          ND
  17  OH                           240                  240                          OH
  18  OK                            94                   94                          OK
  19  OR                            48                   48                          OR


                                3861   RECORDS PROCESSED.


                                1505   RECORDS USED IN GRAPH.
```


VIOLENCE PENNSYLVANIA-WYOMING
440
385
330
275
220
165
110
55
1
2
3
4
5
6
7
8
9
10
11
12
13
14
STATE
----- LEGEND -----
1 PA
2 PR
3 RI
4 SC
5 SD
6 TN
7 TX
8 UT
9 VT
10 VA
11 WA
12 WV
13 WI
14 WY

```
DATAGRAPH PROGRAM                                   NATIONAL RIGHT TO WORK FOUNDATION
PAGE       1                                               SPRINGFIELD, VIRGINIA



                                            PROCESSING STATISTICS

BAR                                 TOTAL          TOTAL                          **RANGE**
NO.          LEGEND                RECORDS         VALUE                LEFT                     RIGHT
---  -----------------------      -------   -----------------   -------------------   -------------------
01   PA                               364                364                         PA
02   FR                                 1                  1                         FR
03   RI                                54                 54                         RI
04   SC                                10                 10                         SC
05   SD                                 5                  5                         SD
06   TN                               169                169                         TN
07   TX                                85                 85                         TX
08   UT                                 7                  7                         UT
09   VT                                 8                  8                         VT
10   VA                                86                 86                         VA
11   WA                                72                 72                         WA
12   WV                                75                 75                         WV
13   WI                                81                 81                         WI
14   WY                                 2                  2                         WY


                                  3861  RECORDS PROCESSED.


                                  1019  RECORDS USED IN GRAPH.
```

RESEARC

Richmond Times-Dispatch

JOHN STEWART BRYAN III
Publisher

EDWARD GRIMSLEY
Editor of the Editorial Page

MARVIN E. GARRETTE
Managing Editor

ALF GOODYKOONTZ
Executive Editor

Rearming Hobbs

Imagine the howls from the liberal elites if government looked the other way as groups of hooligans regularly beat up, say, Puerto Ricans, or lesbians, or Maoists, and destroyed their property. Yet the law's protective mantle frequently turns to ravelings upon the shoulders of one group of citizens — the owners of non-union businesses. Labor bully boys have burned, slugged, shot, and vandalized in attempts to enlarge their bosses' domains — often with impunity.

During the nationwide coal strike a couple of years back, Virginia Gov. John Dalton dispatched the state police to keep United Mine Workers zealots from terrorizing non-union coal haulers. In Kentucky, however, Gov. John Y. Brown declared that he would not "baby-sit" independent coal mines. As a result, "scab" drivers were beaten and non-union trucks burned while state "lawmen" looked on.

According to Reader's Digest, musical-instruments producer Mike Matthews of New York was pummeled by five Neanderthals after his workers refused to join the Plastic Moulders' and Novelty Workers' Union. The gang also worked over several employees (mostly black, Asian, or Latin), one of whom required brain surgery. Mr. Matthews was forced to file for bankruptcy.

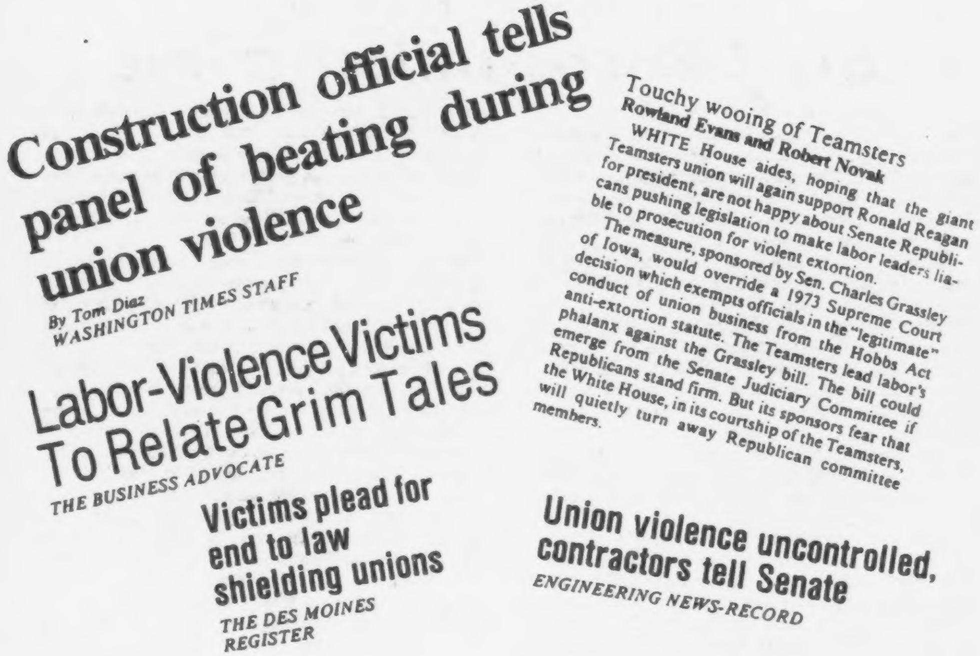
In Louisiana, says columnist John Chamberlain, a 26-year-old father of two named Joe Hooper was mortally wounded in a shootout between rival unionists. "Both the state and local authorities," Mr. Chamberlain writes, "had refused to protect either the construction site or the employees, even though they had advance notice of the raid."

When politics causes local and state law officers to forget their oaths to uphold the Constitution, federal intervention is indicated. U.S. marshals and the FBI, for example, helped ensure the civil rights of Southern blacks in the '60s, when some local cops not only winked at, but doubled as, Ku Klux Klan thugs. Indeed, non-union firms were similarly protected until the Supreme Court in 1973 neutered the Hobbs Act by exempting labor unions from federal prosecution when acts of extortion and violence involved "legitimate union objectives."

Now efforts are underway to restore the act's intent. A bill introduced by Sen. Charles Grassley, R-Iowa — and co-sponsored by, among others, Virginia Sen. Paul Trible — would subject union officials to federal prosecution for many crimes (like murder, manslaughter, maiming, arson, wanton property destruction, and explosives and firearms offenses) when perpetrated against people engaged in interstate commerce. In the House, Rep. J. Kenneth Robinson has introduced a similar measure, whose 42 co-sponsors include fellow Virginians Thomas J. Bliley, Stanford E. Parris, G. William Whitehurst, and Frank R. Wolf.

Few believe, however, that a Hobbs Act amendment will pass this Congress. Such is Big Labor's clout — although why reputable unions would want to stick up for their lawless cousins is a mystery — that the Grassley bill is given only a 50-50 chance in the Republican-dominated Senate. And Tip O'Neill's House? Dream on.

Interestingly, the bills' sponsors are all either Republicans or Democrats from the South. Other Democrats, justly proud of their party's civil rights record, can no longer say that civil-rights obstructionism is the trademark of a Barry Goldwater-Strom Thurmond coalition.



Construction official tells panel of beating during union violence

By Tom Diaz
WASHINGTON TIMES STAFF

Labor-Violence Victims To Relate Grim Tales

THE BUSINESS ADVOCATE

Victims plead for end to law shielding unions

THE DES MOINES REGISTER

Touchy wooing of Teamsters

Rowland Evans and Robert Novak

WHITE House aides, hoping that the giant Teamsters union will again support Ronald Reagan for president, are not happy about Senate Republicans pushing legislation to make labor leaders liable to prosecution for violent extortion.

The measure, sponsored by Sen. Charles Grassley of Iowa, would override a 1973 Supreme Court decision which exempts officials in the "legitimate" conduct of union business from the Hobbs Act anti-extortion statute. The Teamsters lead labor's phalanx against the Grassley bill. The bill could emerge from the Senate Judiciary Committee if Republicans stand firm. But its sponsors fear that the White House, in its courtship of the Teamsters, will quietly turn away Republican committee members.

Union violence uncontrolled, contractors tell Senate

ENGINEERING NEWS-RECORD

HUMAN EVENTS

Will Congress Close Loophole in Hobbs Act?

At a Senate Judiciary Committee meeting last week, witness after witness told how they were victimized by labor violence, thanks largely to a giant judicially-created loophole exempting union-perpetrated crimes from federal anti-extortion law.

At issue was an Administration-supported bill (S.462) introduced by Sen. Charles Grassley (R-Iowa), which would extend the 1946 Hobbs Act — prohibiting extortion in interstate commerce — so that it would cover labor union violence. Thanks to a 1973 Supreme Court decision in the *Enmons* case...labor violence is exempt from federal sanction.

Because state and local governments are often unwilling or unable to stand up to union muscle, the result is that management and non-striking employees are left virtually defenseless against sustained campaigns of terror and violence.

...[T]he star of the hearings was Cher Mungovan of Hawaii, whose husband Walter — a disabled Vietnam veteran — lost his business and has been forced into hiding by a terror campaign launched by a local affiliate of the AFL-CIO Carpenters and Joiners Union.

For Cher and Walter Mungovan, whose plight has been publicized largely because of the efforts of the National Right to Work Committee and the Center on National Labor Policy, trouble began in 1980.... Over the next four and a half months, Cher testified last week, life became unbearable.

"We lost one...contract because the owner was afraid the union would burn their house down.... Tools and materials had been stolen from the job sites. Union picketers threatened the lives of our employees and my family...we received a bomb threat at our house. We received death threats, in note form and on the telephone."

The police, she says, have been no help, with many of them virtually siding with the union thugs. When called about disturbances, they would show up late — if at all.

...[D]espite this record of state and local incompetence, the federal government cannot intervene against the union.... And while may claim that reforming the law...will encourage people to run to Washington with minor grievances, Cher Mungovan says she wants federal intervention as a last resort — if states and localities are unwilling or unable to deal with the problem. As she told the Judiciary Committee last week:

"Today, employers have no one else to turn to after they have exhausted state agencies.... We only ask for equal rights under the law — that unions and their members, or persons they hire, be liable for their actions." Yet if Big Labor has its way, this outrageous loophole will remain in federal law.

CARTERET COUNTY (NC) NEWS-TIMES, August 29, 1983

Law blesses union crime

A charge of assault with a deadly weapon was filed Aug. 15 in Raleigh by a striking telephone company worker against a non-union Southern Bell employee. The striker, walking a picket line outside the telephone company office, charges that the non-union employee tried to hit him with her car as she drove to work.

Had the striker allegedly assaulted the non-striker, it probably would have been useless to take the case to court. Why?

Because a Supreme Court ruling in 1973 states that threats and acts of violence on the part of unions are exempt from the Hobbs Act which prohibits extortion and violence, unless the crimes are committed in pursuit of "legitimate union objectives."

That leaves the door open for strikers to threaten non-striking workers and their families, throw rocks, damage their place of employment and even murder.

Since 1975 more than 3,350 incidents of property destruction, burnings, bombings and assault have been linked to union agitation. The perpetrators are virtually assured of no punishment, so they continue to strengthen their unions, bringing under union domination workers who fear what might happen to them if they refuse to knuckle under.

Effort in Congress to rectify the Supreme Court's error (Enmons decision) that puts unions and officials controlling them above the law, has been blocked in the past by congressmen who get campaign funding from labor unions.

On July 9, however, the Senate Separation of Powers committee voted 3-2 to send to the full Senate Judiciary committee Senate bill 462 which would subject union personnel to the same laws that others must obey. This is the first time in 10 years the labor lobby has been unable to keep such a bill bottled up in committee.

S. 462 amends the Hobbs Act, which the Supreme Court misinterpreted to favor labor organizers. But defenders of workers' rights to reject union affiliation—without fear of life and property loss—say the battle is not won.

Reed Larson, president of the National Right to Work organization, says, "Forced unionism puppets want the bill to die a quiet death in the bureaucratic maze. But this law is crucial to all working Americans. No individual—including union officials—should be above the law."

Persons who agree should express support of S. 462 by writing Strom Thurmond, Chairman, Senate Judiciary Committee, 2226 Dirksen Senate Office Building, Washington, D.C. 20510. Thanks for getting the bill this far along goes to North Carolina's Sen. John East, Sen. Jeremiah Denton and Sen. Alan Simpson. Their votes got the bill out of subcommittee.

The Raleigh case, if it gets to court, may end with exoneration of the non-union employee, for evidence indicates her accuser provoked the action. Yet this is just a small illustration of the lawlessness generated by union personnel who, without amendment to the Hobbs act, can commit crimes without fear of punishment.

Reprinted from THE BIRMINGHAM NEWS, July 22, 1983

Strike Violence

Almost from the beginnings of union organization, violence arising out of strikes has been a blot on the reputation of American labor. Efforts to curb violence initiated by management have been successful, with federal laws guaranteeing the right of workers to organize into unions and to strike and through the oversight of the National Labor Relations Board.

Efforts to control violence by striking workers, however, have failed year after year. But that has not deterred some members of Congress, and this year, another effort is being made. This week a measure was approved in subcommittee by a 3-2 vote to make violence during labor disputes a federal crime.

The issue never gets far, however, because it is nearly always politicized by union lobbyists. Congressmen, sadly, cannot see what they have to gain by antagonizing a formidable group of political activists.

Over the years, striking unions have destroyed millions of dollars in property, intimidated thousands of non-striking workers by threats and beatings and in some cases resorted to what any fair-minded person would characterize as murder. They have gone largely unpunished for these crimes.

Yes, state laws do exist which should serve as deterrents to violence. They are the same laws which should deter any citizen from violence or from destroying the property of another person. But they are largely unenforced because elected local law enforcement officials lack the courage to make arrests and bring suspects to trial for the same reasons Congress hasn't acted.

By turning its back on the issue, Congress inevitably puts its stamp of approval on strikers' violence as a means of forcing union demands on a mining company or a manufacturer. It also tells the non-union worker that despite constitutional guarantees, his rights are subject to the pleasure of union power. It tells the country at large that Congress believes union rights are superior to individual rights.

One hopes the current legislation is approved, but unless Congress shows more courage than it has in the past 40 years, the measure will again slide into oblivion.

Reprinted from THE PHOENIX GAZETTE, August 3, 1983

Revoke union violence license

Arizona can expect little federal assistance in pursuing and prosecuting whoever might be involved in the shooting of 3-year-old Chandra Tallant.

Because this act of violence may be related to the strike against Phelps Dodge, federal law officers are hamstrung by the Supreme Court's 1973 Enmons decision. That ruling, in effect, gave union officials and their agents a license to engage in extortionate violence without fear of federal prosecution as long as their acts are committed in pursuit of "legitimate union objectives."

An amendment to the Hobbs Act to revoke this license has been introduced by Sen. Charles Grassley, R-Iowa. It would restore the federal jurisdiction over union violence which existed prior to the 1973 decision. Sen. Dennis DeConcini, D-Ariz., has not supported the amendment, saying that "local authorities have sufficient means with which to address picket line violence." At the same time, DeConcini has cosponsored legislation which appropriates $100 million a year until 1987 for federal assistance to state and local officials in combatting violent crime.

Reed Larson, president of the National Right To Work Committee, asks DeConcini how he can "condemn federal assistance in preventing and prosecuting violence by union terrorists — while sponsoring a bill which appropriates millions for federal assistance in preventing and prosecuting violent crime by other criminals?"

Good question. The Tallant family and many others who have suffered from violence committed in the midst of a pursuit of "legitimate union objectives" deserve an answer.

american rental association
1900 - 19th Street, Moline, Illinois 61265 Telephone 309/764-2475

C. A. Siegfried, Jr.
Executive Director

October 31, 1983

The Honorable Strom Thurmond, Chairman
Judiciary Committee
218 SROB
United States Senate
Washington, D. C. 20510

Re: S.462 (Hobbs Act)

Dear Mr. Chairman,

On behalf of the American Rental Association (ARA), we wish to express our support for S.462 to Amend 18 U.S.C. 1951 (Hobbs Anti-Extortion Act).

ARA is the national trade association representing the equipment rental industry and is comprised of more than 3000 members who own and operate their small businesses.

Our members are deeply concerned about the violence, intimidation and other coercive methods perpetrated by labor unions during labor disputes and the inadequacies of local law enforcement officials to deal effectively with the problem of extortionate acts.

Amazingly, seven states [1] have specific exemptions from extortion statutes, and five [2] have statutes which restrict the use of police and the national guard in labor disputes. Where state and local enforcement is either unwilling or unable to act because of statutes on the books or political sensitivities, there is a clear mandate for federal intervention. Without federal jurisdiction, states are limited in dealing with labor violence which adversely

[1] Connecticut, Hawaii, Maryland, Nebraska, Oregon, Utah, Washington.

[2] Massachusetts, Montana, Alaska, Indiana, Iowa

affects interstate commerce.

"Nothing in the language or legislative history of federal labor legislation suggests that federal criminal statutes -- enacted to supplement state criminal sanctions -- should not similarly be available to punish union members and officials who try to achieve collective bargaining goals by means...of violence".[3]

The express language of the Hobbs Act makes it a federal crime to commit, or attempt or conspire to commit, acts of extortion that obstruct interstate commerce. It is unconscionable that as a result of the U.S. Supreme Court decision in U.S. v. Enmons,[4] prohibitions enacted in the Hobbs Act against misconduct by labor unions are not applicable where violence and threats are undertaken for the purpose of obtaining objectives of collective bargaining -- so long as the eventual goal is not "wrongful".

Permitting perpetuation of the illogical Enmons rational perpetuates a perception of congressional approval of a doctrine that treats labor unions engaged in violent extortionate behavior as above the law. Legitimate union objectives do not justify violent means.

ARA supports legislation which prohibits extortionate acts of violence during a labor dispute and we endorse Senator Grassley's bill, S.462, which would apply federal criminal law to union violence by clarifying that the existing federal statute (Hobbs Act) is intended by Congress to prohibit acts of union violence committed during labor disputes.

Congress should reaffirm the objectives sought in passage of the Hobbs Act because there is a need for federal intervention to curtail violence and threats of violence which have no proper role in legitimate labor negotiation or disputes. Use of violence during a labor dispute is contrary to the public interest and disturbs industrial peace.

[3] U.S. v. Thordarson, 646 F.2d. 1323 (CA 9, 1981)

[4] U.S. v. Enmons, 410 U.S. 396 (1973)

The members of the American Rental Association respectfully request that you support S. 462. Your consideration of our views will be appreciated and we respectfully request that this letter be made a part of the hearings.

Sincerely yours,

C. A. Siegfried Jr.

C. A. Siegfried, Jr.. CAE
Executive Director

cc: Senator Charles Mathias
Senator Paul Laxalt
Senator Orrin G. Hatch
Senator Robert Dole
Senator Alan K. Simpson
Senator John P. East
Senator Charles E. Grassley
Senator Jeremiah Denton
Senator Arlen Specter
Senator Jospeh R. Biden
Senator Edward M. Kennedy
Senator Robert C. Byrd
Senator Howard M. Metzenbaum
Senator Dennis DeConcini
Senator Patrick J. Leahy
Senator Max S. Baucus
Senator Howell Heflin

Vinton D. Lide, Majority Counsel
Mark Gitenstein, Minority Counsel
Terry Campo, Counsel to Senator Grassley
William T. Stephens, General Counsel

State Legislation re Enmons

1. Statutes in seven states expressly provide an exemption from liability for theft by extortion or for unlawful threats. The exemptions apply to a person who causes or continues a strike, boycott or other similar collective action to obtain property if the property is "demanded or received for the benefit of the group which the actor purports to represent." These seven statutes use similar language.

a. Connecticut Penal Code, § 53a-119(5)(F).

b. Hawaii Penal Code, §§ 707-764(1)(j).

c. Maryland Crimes and Punishment, Art. 27 § 562B.

d. Nebraska Crimes and Punishments, 28-513(1)(e).

e. Oregon Revised Statutes, 164.075(1)(f).

f. Utah Criminal Code, 76-6-406(2)(h).

g. Washington Criminal Code, 9A 04.110 (exemption from liability for unlawful threats, using exemption language of foregoing extortion statutes).

2. Massachusetts provides for authorization by the governor of additional appointments to the state police, but such police cannot be used in a labor dispute unless there is actual violence, and then only by order of the governor. Annotated Laws of Massachusetts, C.22, § 9A.

3. In Montana, highway patrolmen are expressly forbidden to make arrests in labor disputes "or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts." Montana Code Annotated, § 31-110.

4. In Alaska, no part of the Alaska National Guard, Alaska Naval Militia or the state militia may be used against any labor organization or for the purpose of strike breaking within the state. Alaska Statutes, Sec. 26.05.340.

5. In Indiana, the state police may not exercise their powers in labor disputes, nor may they suppress rioting and disorder, except by direction of the governor. Indiana Code, 10-1-1-10.

6. In Iowa, a labor union may not enter an agreement to use violence or coercion to force any employer other than their own employer to comply with the demands of the labor union. Code of Iowa, C. 732, § 732.1, para. 3.

7. The foregoing report reflects the results of a survey of the statutes of the 50 states.

Conn.

§ 53a-119. Larceny defined

A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. Larceny includes, but is not limited to:

(1) Embezzlement. A person commits embezzlement when he wrongfully appropriates to himself or to another property of another in his care or custody.

(2) Obtaining property by false pretenses. A person obtains property by false pretenses when, by any false token, pretense or device, he obtains from another any property, with intent to defraud him or any other person.

(3) Obtaining property by false promise. A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct. In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed.

(4) Acquiring property lost, mislaid or delivered by mistake. A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of larceny if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to it.

(5) Extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will: (A) Cause physical injury to some person in the future; or (B) cause damage to property; or (C) engage in other conduct constituting a crime; or (D) accuse some person of a crime or cause criminal charges to be instituted against him; or (E) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or (F) cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or (G) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or (H) use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or (I) inflict any other harm which would not benefit the actor.

(6) Defrauding of public community. A person is guilty of defrauding a public community who (1) authorizes, certifies, attests or files a claim for benefits or reimbursement from a local, state or federal agency which he knows is false; or (2) knowingly accepts the benefits from a claim he knows is false; or (3) as an officer or agent of any public community, with intent to prejudice it, appropriates its property to the use of any person or draws any order upon its treasury or presents or aids in procuring to be allowed any fraudulent claim against such community. For purposes of this section such order or claim shall be deemed to be property.

(7) Theft of services. A person is guilty of theft of services when: (1) With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids such payment by unjustifiable failure or refusal to pay, by stealth,

or by any misrepresentation of fact which he knows to be false; or (2)(A) with intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains such service or avoids payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay, or (B) with intent to obtain the use of equipment, including a motor vehicle, without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such use which has been permitted him, he obtains such use or avoids such payment therefor by means of any false or fraudulent representation, fraudulent concealment, false pretense or personation, trick, artifice or device, including, but not limited to, a false representation as to his name, residence, employment, or driver's license; or (3) with intent to avoid payment by himself, or another person of the lawful charge for gas, electricity, water, steam, telecommunication or community antenna television service, he obtains such service or avoids payment therefor by himself or another person by means of (A) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (B) any misrepresentation of fact which he knows to be false, or (C) any other artifice, trick, deception, code or device; or (4) with intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device provided by the supplier of the service, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or (5) with intent to obtain, without the consent of the supplier thereof, gas, electricity, water, steam, telephone or community antenna television service, he tampers with any equipment of the supplier thereof designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or (6) obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

(8) Receiving stolen property. A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of stolen property knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner. A person who accepts or receives the use or benefit of a public utility commodity which customarily passes through a meter, knowing such commodity (1) has been diverted therefrom, (2) has not been correctly registered or (3) has not been registered at all by a meter, is guilty of larceny by receiving stolen property.

(9) Shoplifting. A person is guilty of shoplifting who intentionally takes possession of any goods, wares or merchandise offered or exposed for sale by any store or other mercantile establishment with the intention of converting the same to his own use, without paying the purchase price thereof. A person intentionally concealing unpurchased goods or merchandise of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be prima facie presumed to have so concealed such article with the intention of converting the same to his own use without paying the purchase price thereof.

(10) Conversion of a motor vehicle. A person is guilty of conversion of a motor vehicle who, after renting or leasing a motor vehicle under an agreement in writing which

rovides for the return of such vehicle to a particular place at a particular time, fails to turn the vehicle to such place within the time specified, and who thereafter fails to eturn such vehicle to the agreed place or to any other place of business of the lessor ithin one hundred twenty hours after the lessor shall have sent a written demand to him r the return of the vehicle by registered mail addressed to him at his address as shown in e written agreement or, in the absence of such address, to his last-known address as corded in the records of the motor vehicle department of the state in which he is licensed operate a motor vehicle. It shall be a complete defense to any civil action arising out of involving the arrest or detention of any person to whom such demand was sent by gistered mail that he failed to return the vehicle to any place of business of the lessor ithin one hundred twenty hours after the mailing of such demand.

973, P.A. 73-639, § 21; 1975, P.A. 75-225; 1976, P.A. 76-109; 1979, P.A. 79-268; 1981, P.A. 81-224; 81; P.A. 81-263, § 1.).

71 Amendment

1971, P.A. 871, § 24, substituted, at the beginng of subd. (6), "Defrauding" for "Committing e crime of defrauding"; rewrote subds. (7) and) and added subd. (9).

72 Amendments

1972, P.A. 188, § 1, designated existing subpar. of subd. (7) as subpar. (2)(A) and added a bpar. (2)(B).

1972, P.A. 188, § 2, added subd. (10).

73 Amendment

1973, P.A. 73-639, § 21, designated subd. (10) "Conversion of a motor vehicle"; inserted, r the beginning of the first sentence of subd.)), "is guilty of conversion of a motor vehicle" ceding "who, after renting or leasing", and eted ", is guilty of larceny." at the end follow- ; "is licensed to operate a motor vehicle".

75 Amendment

1975, P.A. 75-225 deleted, from subsec. (3), the rd sentence which formerly read: "Such a findshall be based upon evidence establishing that facts and circumstances of the case are wholly nsistent with guilty intent or belief and wholly onsistent with innocent intent or belief, and luding to a moral certainty every hypothesis ept that of the defendant's intention or belief t the promise would not be performed."

6 Amendment

976, P.A. 76-109, included, in subd. (7)(3) and 5), "or community antenna television" service.

9 Amendment

979, P.A. 79-268 substituted, in subd. (7)(3). s, electricity, water, steam," for "a" following rson of the lawful charge for".

1981 Amendments

1981, P.A. 81-224 added, to subd. (8), the third sentence which relates to larceny of utility services.

1981, P.A. 81-263, § 1, substituted, at the beginning of subd. (6), "A person is guilty * * * or agent of any public community," for "Any officer or agent of any public community is guilty of defrauding of public community who".

Law Review Commentaries

Lesser included offense doctrine. Carl J. Schuman and Linda K. Lager (1980) 54 Conn. Bar J. 313.

Lesser-included offense doctrine: Present day analysis. Jerrold H. Barnett (1972) 5 Conn.L. Rev. 255.

Property theft enforcement. (1980) 89 Yale L.J. 1225.

Notes of Decisions

In general ½
Admission, evidence 19.5
Breaking and entering 3.5
Burden of proof 18.5
Burden of proof, evidence 19.4
Conspiracy 3.4
Court comments 25.5
Elements constituting larceny 7.5
Examination of witnesses, evidence 21.5
Grade of offense 1.5
Indictment and information 13
Knowledge, instructions 24.5
Obtaining money by false pretenses 3.6
Theft of services, in general 15.5
Transient guests, theft of services 15.6
Use of force, arrest 10.5

½. In general

Insurance policy definition of theft as "any act of stealing or attempt thereat, including loss of property from a known place under circumstances when a probability of theft exists" includes wrongful withholding of property just as such an act is included within definition of larceny. Danulevich v. Hartford Fire Ins. Co. (1980) 421 A.2d 559, 36 Conn.Sup. 570.

1.5. Grade of offense

Although one of factors which determines the grade of larceny committed is value of property taken, when value cannot be ascertained, its value is deemed to be an amount less than $50 so as to constitute larceny in fourth degree. State v. Vasquez (1978) 405 A.2d 662, 176 Conn. 239.

3.4. Conspiracy

Gravamen of crime of conspiracy is unlawful combination and an act done in pursuance thereof, not accomplishment of objective of conspiracy; hence, review of the sufficiency of evidence as regards defendant's intent to sustain conviction of conspiracy to commit larceny would be directed only to defendant's intent at which crime of conspiracy was alleged to have been committed, and would not be affected by defendant's later state of mind. State v. Stevens (1979) 425 A.2d 104, 178 Conn. 649.

3.5. Breaking and entering

Conviction of breaking and entering was not precluded notwithstanding that no one actually saw either or both defendants break into summer house. State v. Benton (1971) 288 A.2d 411, 161 Conn. 404.

A conviction for burglary or breaking and entering may be upheld, notwithstanding any asserted inconsistency between it and an acquittal on another count charging larceny or a similar theft crime. Id.

Convictions of breaking and entering were not required to be set aside on ground of inconsistencies with acquittal on charges of larceny where there was nothing in either information to indicate that acquittal on larceny counts was inconsistent with convictions on counts charging breaking and entering. Id.

3.6. Obtaining money by false pretenses

Intent to defraud, which is an essential element of the crime of obtaining money by false pretenses, is difficult to prove beyond a reasonable doubt by direct evidence, but it may be inferred from the conduct of the accused. State v. Coleman (1974) 355 A.2d 11, 167 Conn. 260.

Denial of motion by defendant, in prosecution for obtaining money by false pretenses, to dismiss information and to discharge defendant because the State, in its information and in bill of particulars, failed to charge defendant with a crime, was proper where defendant made no claim, and where there was not the slightest indication in the record, that defendant was in any way prejudiced or that in its charge to the jury the court did not fully instruct them as to the burden of the State to prove an intent to defraud. Id.

4. Receiving stolen property, in general

Denial of motion made by defendant after prosecution had rested to prevent use for impeachment purposes of a prior conviction for breaking and entering with intent to commit larceny amounted to an abuse of discretion and was such as to entitle defendant to a new trial since value of prior conviction upon issue of credibility, after passage of almost two decades, could not reasonably be viewed as sufficient to outweigh substantial prejudice which must have resulted from close relationship between crime charged against defendant, larceny by receiving stolen goods, and prior offense of breaking and entering with intent to commit larceny. State v. Iasevoli (1982) 449 A.2d 996, 188 Conn. 325.

Testimony of manager that three stoves recovered by police were the same model as those which had been stolen from the plant was sufficient, when combined with evidence that stoves, which were identical to those which had been stolen, were purchased by defendant at less than full sale price and concealed by defendant in his home, to sustain conviction of larceny in the second degree as a receiver of stolen property notwithstanding inability of the manager, due to absence of serial number, to state that the stoves recovered by the police were among those discovered to be missing. Id.

Affidavit of police officer describing removal of stove from defendant's home after police had visited defendant and also describing concealment of stove in woods indicated sufficient consciousness of guilt to support an inference of probable cause with respect to mental element of crime of receiving stolen goods and, as such supported issuance of an arrest warrant. Id.

Defendant, who was charged with receiving stolen property by retaining such property knowing that it had been stolen, had standing to challenge search of automobile even though he was only a passenger in automobile and had no legitimate expectation of privacy in the areas of the car searched, in that he was charged with an offense in which possession was an essential element. State v. Perez (1980) 435 A.2d 334, 181 Conn. 299.

Conn. General
Statutes Annotated

Historical Note

1971, P.A. 871, § 23, added, to subsection (a), definitions (8) through (15).

Cross References

Criminal trespass, see § 53a-100.
Treble damages for theft, see § 52-564.

Library References

Larceny 🔑1.	C.J.S. Larceny §§ 1, 4, 7, 9.
Robbery 🔑1.	C.J.S. Robbery §§ 1, 2, 23, 77.

§ 53a–119. Larceny defined

A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. Larceny includes, but is not limited to:

(1) Embezzlement. A person commits embezzlement when he wrongfully appropriates to himself or to another property of another in his care or custody.

(2) Obtaining property by false pretenses. A person obtains property by false pretenses when, by any false token, pretense or device, he obtains from another any property, with intent to defraud him or any other person.

(3) Obtaining property by false promise. A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct. In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding shall be based upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed.

(4) Acquiring property lost, mislaid or delivered by mistake. A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of larceny if, with purpose to deprive the own-

er thereof, he fails to take reasonable measures to restore the property to a person entitled to it.

(5) Extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

(A) Cause physical injury to some person in the future; or

(B) cause damage to property; or

(C) engage in other conduct constituting a crime; or

(D) accuse some person of a crime or cause criminal charges to be instituted against him; or

(E) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(F) cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

(G) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(H) use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(I) inflict any other harm which would not benefit the actor.

(6) Defrauding of public community. Any officer or agent of any public community is guilty of defrauding of public community who, with intent to prejudice it, appropriates its property to the use of any person or draws any order upon its treasury or presents or aids in procuring to be allowed any fraudulent claim against such community. For purposes of this section such order or claim shall be deemed to be property.

(7) Theft of services. A person is guilty of theft of services when:

(A) with intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids such payment by unceny. It shall be a complete defense to any civil action arising out of or involving the arrest or detention of any person to whom such demand was sent by registered mail that he failed to return the vehicle to any place of business of the lessor within one hundred twenty hours after the mailing of such demand.

(1969, P.A. 828, § 121, eff. Oct. 1, 1971; 1971, P.A. 871, § 24; 1972, P.A. 188, §§ 1, 2.)

Commission Comment—1971

This section sets out the basic general definition of larceny: a wrongful taking, obtaining or withholding of property with intent to deprive or appropriate. This definition is purposely broad and is meant to encompass the myriad ways in which property may be stolen. The question of wrongfulness is meant to incorporate and to be read in the light of the common law standards enunciated in such cases as State v. Banet, 98 A.2d 530, 140 Conn. 118 (1953) and State v. Sawyer, 110 A. 461, 95 Conn. 34 (1920). Subsections (1) to (9), it should be noted, are not exclusive. They are not meant to limit the broad definition set out in the first paragraph of this section, but are meant as certain specific ways of committing the offense.

Subsection (1) replaces the various prior embezzlement statutes which draw distinctions based on the relationship between embezzler and embezzlee. These distinctions are eliminated.

Subsection (2) substantially restates prior section 53-360, deleting the so-called "bad check" portion of that section, which is now covered by section 53a-128.

Subsection (3) expands the existing scope of larceny to encompass acquisition of property through fraudulent promises made without any intention of performance. This section provides, however, that non-performance of a promise means nothing in itself and that "fraudulent intent" must be established by evidence rendering the conclusion a "moral certainty."

Subsection (6) substantially restates prior section 53-364.

Subsection (8) makes major changes in the prior law regarding receiving stolen property, section 53-65. First, it makes clear that if the actor initially receives the property innocently, subsequently learns it is stolen and retains it thereafter, he is guilty. This was not clear under prior law. Second, the element of concealment, a requirement under prior law, is eliminated. Under this section it will be a factor relevant to the issue of the actor's guilty knowledge. Third, the receiver is treated, not as a principal to the theft itself, but as a separate offender. Thus, he must be charged as such. Fourth, the actor's guilty intent is satisfied if he knows or believes that the property "has probably been stolen." Fifth, the section makes clear that lending on the security of the property is receiving.

Subsection (9) is essentially a restatement of the shoplifting portion of prior section 53-63, with the deletion, however, of the second presumption contained in section 53-63.

Notes of Decisions

Admissibility, evidence 20
Aiders and abettors 3
Arrest 10
Concealment, receiving stolen goods 6
Constitutional rights of defendants 12
Elements constituting offense, receiving stolen property 5
Evidence 19-22
  In general 19
  Inferences 21
  Admissibility 20
  Sufficiency 22
Guilty knowledge, receiving stolen goods 7
Indictment 13
Inferences, evidence 21
Instructions 24
Jury trial 17
Misrepresentation 2
Motor vehicle thefts 1
New trial 29
Offenses committed outside of state 8
Possession of stolen goods 9
Presumptions 18
Prosecution for other offenses 14
Prosecution of receiver as principal 15
Punishment 26
Questions for jury 23
Receiving stolen property 4-7
  In general 4
  Concealment 6
  Elements constituting offense 5
  Guilty knowledge 7
Reduction of sentence 28
Review 30
Searches and seizures 11
Sentence, propriety of 27
Sufficiency, evidence 22
Sufficiency and propriety of indictment 13
Venue 16
Verdict and findings 25

1. Motor vehicle thefts

Theft of automobile is a felony. State v. Keeby (1970) 268 A.2d 652, 159 Conn. 201, motion dismissed 266 A.2d 199, 159 Conn. 635, certiorari denied 91 S.Ct. 569, 400 U.S. 1010, 27 L.Ed.2d 623.

2. Misrepresentation

Misrepresentation might be present if one represented that he, or an institution in which he was interested, was solvent whereas in fact he or the institution was insolvent, and it was not necessary that the accused expressly state that he was solvent, if all his statements together reasonably created a belief to that effect. State v. Farrah (1971) 282 A.2d 879, 161 Conn. 43.

A representation may be found to be false either expressly or by implication and may consist in any act, word, symbol, or token calculated and intended to deceive. Id.

3. Aiders and abettors

The guilt of one who aided or abetted was equal to the guilt of one who actually committed the crime, and charge under aiding and abetting statute (former section 54-196), which rendered anyone who came within its terms guilty as a principal offender, was correct statement of the law in larceny prosecution. State v. Raffone (1971) 285 A.2d 323, 161 Conn. 117.

4. Receiving stolen property, in general

In prosecution for receiving stolen property, where defendant's counsel argued that state's witnesses, who were at time of trial awaiting sentence for theft of the property, were

Hawaii

that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of collection or attempt at collection. [L 1979, c 106, pt of §1; am L 1980, c 232, §39]

Amendment Note

L 1980 substituted reference to "section 707-761" for "this" section and made terminology changes throughout.

COMMENTARY ON §§707-760 TO 763

Act 106, Session Laws 1979, established these sections to extend Hawaii's extortion laws to prohibit extortionate credit transactions.

Act 232, Session Laws 1980, amended §707-763 by substituting "part" for "chapter" and "section 707-761" for "this section" to correct errors in reference. The act further amended §707-763 by making style changes.

[§707-764] **Extortion.** A person commits extortion if he does any of the following:

(1) Obtains, or exerts control over, the property or services of another with intent to deprive him of the property or services by threatening by word or conduct to:

- (a) Cause bodily injury in the future to the person threatened or to any other person; or
- (b) Cause damage to property; or
- (c) Subject the person threatened or any other person to physical confinement or restraint; or
- (d) Commit a penal offense; or
- (e) Accuse some person of any offense or cause a penal charge to be instituted against some person; or
- (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
- (g) Reveal any information sought to be concealed by the person threatened or any other person; or
- (h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; or
- (j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the defendant purports to represent; or
- (k) Do any other act which would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationships; or

(2) Intentionally compels or induces another person to engage in conduct from which he has a legal right to abstain or to abstain from conduct in which he has a legal right to engage by threatening by word or conduct to do any of the actions set forth in paragraphs (a) through (k) of this section; or

(3) Makes or finances any extortionate extension of credit, or collects any extension of credit by extortionate means. [L 1979, c 106, pt of §1]

Case Notes

Substantial direct and circumstantial evidence existed from which jury could have convicted defendant of theft in the first degree by extortion. 64 H. 65, 637 P.2d 407.

"Legal right to abstain" is an essential component of the offense under subsection (2). 63 H. 105, 621 P.2d 381.

[§707-765] **Extortion in the first degree.** (1) A person commits the offense of extortion in the first degree if he commits extortion:

(a) Of property or services the value of which exceeds $200 in total during any twelve-month period; or

(b) By making or financing any extortionate extension of credit, or by collecting any extension of credit by extortionate means.

(2) Extortion in the first degree is a class B felony. [L 1979, c 106, pt of §1]

[§707-766] **Extortion in the second degree.** (1) A person commits the offense of extortion in the second degree if he commits extortion:

(a) Of property or services the value of which exceeds $50 during any twelve-month period;

(b) As set forth in section 707-764(2).

(2) Extortion in the second degree is a class C felony. [L 1979, c 106, pt of §1]

[§707-767] **Extortion in the third degree.** (1) A person commits the offense of extortion in the third degree if he commits extortion of property or services.

(2) Extortion in the third degree is a misdemeanor. [L 1979, c 106, pt of §1]

[§707-768] **Firearms, explosives, and dangerous weapons.** Extortion in any degree is a class A felony when a firearm, explosive, or any dangerous weapon is immediately available and is physically used as part of the threat. [L 1979, c 106, pt of §1]

[§707-769] **Defenses to extortion.** (1) It is a defense to a prosecution for extortion as defined by paragraph (1) of section 707-764 that the defendant:

(a) Was unaware that the property or service was that of another; or

(b) Believed that he was entitled to the property or services under a claim or right or that he was authorized, by the owner or by law, to obtain or exert control as he did.

(2) If the owner of the property is the defendant's spouse it is a defense to a prosecution for extortion under paragraph (1) of section 707-764 that:

(a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and

(b) The defendant and his spouse were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, or money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) It is an affirmative defense to a prosecution for extortion as defined in paragraphs (1) and (2) of section 707-764 and as further defined by subparagraphs (e), (f), (g), and (i), that the defendant believed the threatened accusation, penal charge, or exposure to be true, or the proposed action of a public servant was justified, and that his sole intention was to compel or induce the victim to give property or services to the defendant due him as restitution or indemnification for harm done, or as compensation for property obtained or lawful services performed, or to induce the victim to take reasonable action to prevent or to remedy the wrong which was the subject of the threatened accusation, charge, exposure, or action of a public servant in circumstances to which the threat relates.

(5) In a prosecution for extortion as defined in paragraph (1) of section 707-764, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled [L 1979, c 106, pt of §1]

COMMENTARY ON §§707-764 TO 769

Act 106, Session Laws 1979, established these sections as part of a consolidation of laws pertaining to extortion wherein the Legislature sought to make those laws simpler and more comprehensive. The Legislature rejected a provision making acts which caused the victim "great mental anguish" extortion in the first degree on the grounds that such a standard is too subjective, and would differ from one individual to the next. Conference Committee Report No. 43 (1979).

CHAPTER 708
OFFENSES AGAINST PROPERTY RIGHTS

PART I. GENERAL PROVISIONS RELATING TO OFFENSES AGAINST PROPERTY RIGHTS

SECTION
708-800 DEFINITIONS OF TERMS IN THIS CHAPTER
[708-802] PROPERTY RECOVERED IN BURGLARY, THEFT, AND RELATED OFFENSES

PART II. BURGLARY AND OTHER OFFENSES OF INTRUSION
708-812 POSSESSION OF BURGLAR'S TOOLS
708-813 CRIMINAL TRESPASS IN THE FIRST DEGREE
708-814 CRIMINAL TRESPASS IN THE SECOND DEGREE

PART III. CRIMINAL DAMAGE TO PROPERTY
708-829 CRIMINAL LITTERING

PART IV. THEFT AND RELATED OFFENSES
708-830 THEFT
708-831 THEFT IN THE FIRST DEGREE
708-832 THEFT IN THE SECOND DEGREE
708-833.5 SHOPLIFTING
708-834 DEFENSES: UNAWARENESS OF OWNERSHIP; CLAIM OF RIGHT; HOUSEHOLD BELONGINGS; CO-INTEREST NOT A DEFENSE
[708-837.5] FAILURE TO RETURN LEASED OR RENTED PERSONAL PROPERTY; PENALTY
708-838 REMOVAL OF IDENTIFICATION MARKS
708-839 UNLAWFUL POSSESSION

MD.

§ 562A. Coercing or intimidating another to contribute or donate.

(a) *Prohibited acts.* — It is unlawful for any person, group or organization to engage in any act or conduct for the sole purpose of coercing or intimidating another person to contribute or donate any goods, materials, services, or moneys to any social, economic, or political association or organization.

(b) *Labor picketing not prohibited.* — Nothing herein shall be deemed to prohibit any picketing assembly in connection with a labor dispute as that term is defined in Article 100, § 74 of the Annotated Code of Maryland (1964 Replacement Volume), title "Work, Labor and Employment," subtitle "Injunction," as amended from time to time.

(c) *Penalties.* — Any person found guilty of violating this section shall be punished by a fine of not more than $100 or by imprisonment for not more than 90 days or both. Each day in which a violation of this section occurs constitutes a separate offense. (1972, ch. 721.)

Legislative intent. — There is not the slightest indication that the legislature, by the passage of this section, intended to eliminate or to amend the common-law offense of misconduct in office. Chester v. State, 32 Md. App. 593, 363 A.2d 605 (1976).

§ 562B. Extortion generally.

Every person who obtains or attempts to obtain by extortion a sum of money, real or personal property or any thing of value of $300 or more from any person is guilty of a felony, and upon being convicted thereof, shall be sentenced to imprisonment for not more than ten years or fined not more than $5,000, or both. If the sum of money, property, or thing of value is under $300, the person is guilty of a misdemeanor and upon being convicted thereof, shall be sentenced to not more than 18 months and be fined not more than $500, or both. For the purposes of this section extortion means obtaining property from another, with his consent, induced by wrongful use of actual or threatened force, or violence or by wrongful threat of economic injury. This section does not apply to legitimate efforts by employees or their representatives to obtain certain wages, hours or working conditions. A prosecution for the felony offense under this section shall be instituted within 5 years after the offense was committed. (1978, ch. 449.)

§ 562C. Extortion by State or local officer or employee generally.

Every officer or employee of the State of Maryland, a county, Baltimore City, a municipality or bicounty or multicounty agency, who obtains or attempts to obtain, by extortion, from any person a sum of money, real or personal property or any thing of value that exceeds $300, is guilty of a felony and shall be fined not more than $5,000 or imprisoned not more than ten years or both and, notwithstanding any pardon, shall be permanently barred from employment by the State of Maryland, any county, municipality, bicounty or multicounty

MD.

search warrant. Johnson v. State, 14 Md. App. 721, 288 A.2d 622, cert. denied, 409 U.S. 1039, 93 S. Ct. 517, 34 L. Ed. 2d 487 (1972).

Nonessential or invalid parts treated as surplusage. — If a warrant is essentially valid, or is valid as to one command and not so as to another, the parts not essential or invalid may be treated as surplusage. Dow v. State, 207 Md. 80, 113 A.2d 423 (1955).

Even though the affidavit contains insufficient or even improper information which should not be considered by the court, if, in addition, it contains sufficient proper information to show probable cause, the court is justified in issuing the warrant. Shrout v. State, 238 Md. 170, 208 A.2d 565 (1965).

A search warrant which refers to the wrong statute is not invalid, the crime being accurately described in the words of the statute. Carpenter v. State, 200 Md. 31, 88 A.2d 180 (1952); Saum v. State, 200 Md. 85, 88 A.2d 562 (1952); Wilson v. State, 200 Md. 187, 88 A.2d 564 (1952).

SHOPLIFTING

§ 551A. Shoplifting.

Repealed by Acts 1978, ch. 849, § 4.

Editor's note. — Section 4, ch. 849, Acts 1978, effective July 1, 1979, also repealed the subheading "Shoplifting."

Section 7 of ch. 849 provides that the repeal by the act of crimes and offenses existing prior to July 1, 1979, does not preclude the prosecution of persons who, prior to July 1, 1979, committed those crimes and offenses as those crimes and offenses then existed.

SIT-DOWN STRIKES

§ 552. Sit-down strikes.

It shall be unlawful for any employee or former employee or group or groups thereof to remain upon land, premises or property or in buildings under the legal control of his or their employer after a notice to leave shall have been given by said employer or his duly authorized agent when the purpose of [or] effect of such refusal to leave is to deprive such employer of the substantial possession, control or use of such land, premises, property or building, provided that nothing in this section shall be construed to include within its provisions such refusal to leave under a bona fide claim of right or ownership of said land, property, premises or building.

Any corporation, association, or organization responsible for such illegal occupation of private property shall be financially liable for whatever loss of revenue or loss from damage inflicted that the owners of said property have suffered as a result of said occupation.

Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five dollars ($5.00) and not more than fifty dollars ($50.00). (An. Code, 1951, § 27; 1941, ch. 340.)

Nebraska

bearer (a) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, or (b) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument.

The word deceive does not include falsity as to matters having no pecuniary significance, or statements unlikely to deceive ordinary persons in the group addressed.

Source: Laws 1977, LB 38, § 111.

28-513. Theft by extortion. (1) A person commits theft if he obtains property of another by threatening to:

(a) Inflict bodily injury on anyone or commit any other criminal offense; or

(b) Accuse anyone of a criminal offense; or

(c) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(d) Take or withhold action as an official, or cause an official to take or withhold action; or

(e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(2) It is an affirmative defense to prosecution based on subdivision (1) (b), (1) (c), or (1) (d) of this section that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

Source: Laws 1977, LB 38, § 112.

28-514. Theft of property lost, mislaid, or delivered by mistake; penalty. A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it. Any person violating the provisions of this section shall, upon conviction thereof, be punished by the penalty prescribed in the next lower classification below the value of the item lost, mislaid, or delivered under a mistake pursuant to section 28-518.

OREGON

(3) In a prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner.

(4) It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft. [1971 c.743 §132]

164.040 [Amended by 1959 c.236 §4; repealed by 1971 c.743 §432]

164.045 Theft in the second degree. (1) A person commits the crime of theft in the second degree if, by other than extortion, he:

(a) Commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or aggregate transaction is under $200.

(2) Theft in the second degree is a Class A misdemeanor. [1971 c.743 §124]

164.050 [Repealed by 1965 c.253 §153]

164.055 Theft in the first degree. (1) A person commits the crime of theft in the first degree if, by other than extortion, he commits theft as defined in ORS 164.015; and

(a) The total value of the property in a single or aggregate transaction is $200 or more; or

(b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected thereby; or

(c) The theft is theft by receiving committed by buying, selling or lending on the security of the property; or

(d) The subject of the theft is a firearm or explosive; or

(e) The subject of the theft is a livestock animal.

(2) As used in this section:

(a) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

(c) "Livestock animal" means a horse, gelding, mare, stallion, colt, mule, ass, jennie, bull, steer, cow, calf, goat, sheep, lamb, pig and hog.

(3) Theft in the first degree is a Class C felony. [1971 c.743 §125; 1973 c.405 §1]

164.060 [Repealed by 1965 c.253 §153]

164.065 Theft of lost, mislaid property. A person who comes into control of property of another that he knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner. [1971 c.743 §126]

164.070 [Amended by 1965 c.253 §131; repealed by 1971 c.743 §432]

164.075 Theft by extortion. (1) A person commits theft by extortion when he compels or induces another person to deliver property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will in the future:

(a) Cause physical injury to some person; or

(b) Cause damage to property; or

(c) Engage in other conduct constituting a crime; or

(d) Accuse some person of a crime or cause criminal charges to be instituted against him; or

(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(f) Cause or continue a strike, boycott or other collective action injurious to some person's business; except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

(g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or

UTAH

of obtaining money by false pretense when money for transmission to him was deposited with telegraph company within state of Utah, notwithstanding that he received money at telegraph office outside state, since telegraph company acted as his agent in accepting money. State v. Devot, 66 U. 319, 242 P. 395, 43 A. L. R. 532.

Venue of offense.

District court had jurisdiction of offense of obtaining money by false pretense where both misrepresentation and delivery of goods were accomplished in Utah. State v. Cobb, 13 U. (2d) 276, 374 P. 2d 844.

76-6-406. Theft by extortion.—(1) A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

(2) As used in this section, extortion occurs when a person threatens to:

(a) Cause physical harm in the future to the person threatened or to any other person or to property at any time; or

(b) Subject the person threatened or any other person to physical confinement or restraint; or

(c) Engage in other conduct constituting a crime; or

(d) Accuse any person of a crime or expose him to hatred, contempt, or ridicule; or

(e) Reveal any information sought to be concealed by the person threatened; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(h) Bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(i) Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

History: C. 1953, 76-6-406, enacted by L. 1973, ch. 196, § 76-6-406.

Cross-References.

Penalty for receiving illegal fees, 21-7-13 to 21-7-15.

Collateral References.

Extortion⇐1.

35 C.J.S. Extortion § 1.

31 Am. Jur. 2d 900, Extortion, Blackmail and Threats, § 1.

Constitutionality, construction, and application of federal act relating to extortion in connection with trade or commerce (Anti-racketeering Act), 138 A. L. R. 811.

Criminal liability of corporation for extortion, false pretenses, or similar offenses, 49 A. L. R. 3d 820.

Extortion predicated upon statements or intimations regarding criminal liability, in connection with attempt to collect or settle a claim which defendant believed to be valid, 135 A. L. R. 728.

UTAH

DECISIONS UNDER FORMER LAW

Elements.

Use of force or fear was essential element of crime of extortion, and in this respect extortion was analogous to robbery; if some other cause were primary and controlling one in inducing consent, there was no extortion. State v. Prince, 75 U. 205, 284 P. 108.

Evidence.

Evidence that defendant verbally demanded money from complaining witness and that defendant's wife wrote threatening letter to him was insufficient to sustain conviction of husband under statute which proscribed sending threatening letter with intent to extort money. State v. Anderson, 63 U. 542, 227 P. 810.

Evidence that married woman wrote letter to complaining witness stating that her husband had left her and informing witness that unless she made settlement for certain tragedy, sender of letter would cause trouble and scandal was insufficient to sustain conviction of wife. State v. Anderson, 63 U. 542, 227 P. 810.

Fear.

If fear was controlling factor in inducing victim to consent to and to pay money to defendant, crime of extortion was complete, even though there was also another and different motive, that of entrapping defendant at suggestion of prosecuting attorney; if fear remained as controlling factor, it was unnecessary for it to be sole motive. State v. Prince, 75 U. 205, 284 P. 108.

In prosecution for extortion, fear could be shown by conduct, such as loss of sleep at night and the like. State v. Prince, 75 U. 205, 284 P. 108.

Sending threatening letter.

Preparation or assistance in preparation of letter to debtor, seeking payment on dishonored check plus attorney's fees and collection charges, fell within the statute which prohibited sending threatening letter when letter contained reference to Penal Code and indicated that issuance of dishonored check was crime. In re Badger, 27 U. (2d) 174, 493 P. 2d 1273.

76-6-407. Theft of lost, mislaid, or mistakenly delivered property.—A person commits theft when:

(1) He obtains property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return it to the owner; and

(2) He has the purpose to deprive the owner of the property when he obtains the property or at any time prior to taking the measures designated in paragraph (1).

History: C. 1953, 76-6-407, enacted by L. 1973, ch. 196, § 76-6-407.

Collateral References.

Larceny🔑10.

52A C.J.S. Larceny § 18.

50 Am. Jur. 2d 278, Larceny § 101.

Finder of property, larceny by, 36 A. L. R. 372.

76-6-408. Receiving stolen property—Duties of pawnbrokers.—(1) A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

(2) The knowledge or belief required for paragraph (1) is presumed in the case of an actor who:

(a) Is found in possession or control of other property stolen on a separate occasion; or

UTAH

DECISIONS UNDER FORMER LAW

Elements.

Use of force or fear was essential element of crime of extortion, and in this respect extortion was analogous to robbery; if some other cause were primary and controlling one in inducing consent, there was no extortion. State v. Prince, 75 U. 205, 284 P. 108.

Evidence.

Evidence that defendant verbally demanded money from complaining witness and that defendant's wife wrote threatening letter to him was insufficient to sustain conviction of husband under statute which proscribed sending threatening letter with intent to extort money. State v. Anderson, 63 U. 542, 227 P. 810.

Evidence that married woman wrote letter to complaining witness stating that her husband had left her and informing witness that unless she made settlement for certain tragedy, sender of letter would cause trouble and scandal was insufficient to sustain conviction of wife. State v. Anderson, 63 U. 542, 227 P. 810.

Fear.

If fear was controlling factor in inducing victim to consent to and to pay money to defendant, crime of extortion was complete, even though there was also another and different motive, that of entrapping defendant at suggestion of prosecuting attorney; if fear remained as controlling factor, it was unnecessary for it to be sole motive. State v. Prince, 75 U. 205, 284 P. 108.

In prosecution for extortion, fear could be shown by conduct, such as loss of sleep at night and the like. State v. Prince, 75 U. 205, 284 P. 108.

Sending threatening letter.

Preparation or assistance in preparation of letter to debtor, seeking payment on dishonored check plus attorney's fees and collection charges, fell within the statute which prohibited sending threatening letter when letter contained reference to Penal Code and indicated that issuance of dishonored check was crime. In re Badger, 27 U. (2d) 174, 493 P. 2d 1273.

76-6-407. Theft of lost, mislaid, or mistakenly delivered property.—A person commits theft when:

(1) He obtains property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return it to the owner; and

(2) He has the purpose to deprive the owner of the property when he obtains the property or at any time prior to taking the measures designated in paragraph (1).

History: C. 1953, 76-6-407, enacted by L. 1973, ch. 196, § 76-6-407.

Collateral References.

Larceny⟹10.

52A C.J.S. Larceny § 18.

50 Am. Jur. 2d 278, Larceny § 101.

Finder of property, larceny by, 36 A. L. R. 372.

76-6-408. Receiving stolen property—Duties of pawnbrokers.—(1) A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

(2) The knowledge or belief required for paragraph (1) is presumed in the case of an actor who:

(a) Is found in possession or control of other property stolen on a separate occasion; or

Wash. 9A.04.110(25)(i)

see pp. 13-14

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1975 ch 260 § 9A.04.090.

9A.04.100 **Proof beyond a reasonable doubt.** (1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest degree.

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1975 ch 260 § 9A.04.100.

COLLATERAL REFERENCES

Am Jur 2d Evidence §§ 2, 125, 1170-1178.

Annotations:

46 ALR2d 1176 (validity of legislation creating presumption of intoxication or the like from presence of specified percentage of alcohol in blood).

53 ALR2d 1220 (burden in proof in prosecution for false pretense based on false statement as to existing encumbrance on chattel made to obtain loan or credit).

69 ALR2d 1397 (burden of proof as to entrapment in prosecution for bribery or offer to bribe).

86 ALR2d 656 (presumption of deliberation or premeditation from the fact of killing).

17 ALR3d 146 (modern status of rules as to burden and sufficiency of proof of mental irresponsibility in criminal case).

17 ALR3d 1491 (validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts).

43 ALR3d 221 (modern status of rules as to burden and quantum of proof to show self-defense).

49 ALR3d 526 (burden of proof of defendant's age, in prosecution where attainment of particular age is statutory requisite of guilt).

67 ALR3d 988 (necessity of proving venue or territorial jurisdiction of criminal offenses beyond reasonable doubt).

28 ALR Fed 767 (instructing on burden of proof as to defense of entrapment in federal criminal case).

9A.04.110 **Definitions.** In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4) "Bodily injury" or "physical injury" means physical pain, illness, or an impairment of physical condition;

(5) "Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious bodily injury;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is

vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person", "he", and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Property" means anything of value, whether tangible or intangible, real or personal;

(22) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(23) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(24) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

~~(25)~~ "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships.

(26) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(27) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1975 ch 260 § 9A.04.110. Based on Laws 1909 ch 249 § 51 p 902.

See RRS § 2303 and former RCW 9.01.010.

CROSS REFERENCES

Computation of time: RCWA 1.12.040.

COLLATERAL REFERENCES

Am Jur 2d Burglary §§ 3-6, 8, 10, 12, 22, Criminal Law §§ 86, 87, 89, 91. False Pretenses § 34.

CJS Criminal Law §§ 1 et seq.

Annotations:

22 ALR2d 854 (inference of malice or intent to kill where killing is by blow without weapon).

22 ALR3d 1305 (provisions of burglary or theft policy requiring losses evidenced by "physical damage to premises").

Key Number Digests:

Criminal Law ⚷1, 13.

NOTES OF DECISIONS

2 Ballinger's Ann.Codes § St. § 7108, made a person who "feloniously" stole, etc., personal property worth $30 or more guilty of grand larceny, section 7109 made one who "feloniously" stole, etc., property of less value guilty of petit larceny, section 6849 permitted words conveying the same meaning as those in a statute to be used in an information, and section 6850 held an information sufficient if the crime charged was set out so that a person of ordinary intelligence could understand what was intended. An information stating that the accused "unlawfully" stole $785, with intent to defraud the owner thereof, sufficiently alleged the crime of grand larceny, though it omitted the word "feloniously." State v Smith (1903) 31 Wn 245, 71 P 767.

In view, among other things, of provision of this section that personal property includes all instruments or writings completed and ready to be delivered by which any right is or purports to be evidenced or created, one may be guilty of extorting a check though it had no actual cash value from the fact that it would not have been cashed. State v Barr (1912) 67 Wn 87, 120 P 509.

Provision that term "property" includes both real and personal property did not change the rule that land was not the subject of larceny as defined by former statute. State v Klinkenberg (1913) 76 Wn 466, 136 P 692.

In view of provision of this statute that it is not necessary to prove intent to defraud any person and provision of another statute that where intent to defraud is an element of the offense, it is sufficient to prove intent to defraud any person whatsoever, information for forgery, setting forth the instrument as forged with intent to defraud is sufficient without stating the names of the persons defrauded. State v Thomas (1918) 102 Wn 564, 172 P 650.

In view of provision of this statute that any person shall be deemed "owner" of any property who has general or special property in it, on either general or special deposit, money becomes property of bank. State v Morris (1920) 109 Wn 490, 187 P 350.

This section does not require that leasehold be deemed "real estate" within meaning of statute requiring agreement authorizing or employing agent or broker to sell or purchase real estate to be in

Guire v City of Seattle (1982) 31 Wn App 436, 642 P2d 765.

Const. Art. 1, § 21, does not require all jurors in a criminal case to agree that the higher degree of an offense was not committed before considering the lesser included offense, and therefore trial court properly gave supplemental instruction which did not require jury to be unanimous as to defendant's innocence of first-degree assault before considering lesser included offense of second-degree assault. State v Watkins (1982) 31 Wn App 465, 643 P2d 465.

Instructions on first-degree robbery and second-degree assault were not erroneous as failing to specifically inform jury that elements of accomplice's liability must be proved beyond a reasonable doubt: court gave standard burden of proof since instruction, standard accomplice instruction, and the "elements" and "to convict" instructions for both robbery and assault and such correctly stated the law and permitted defense counsel to argue his theory; and defendant's status as accomplice was not an element of either of the principal crimes. State v Teaford (1982) 31 Wn App 496, 644 P2d 136.

In prosecution under Uniform Firearms Act, RCWA 9.41.040, state is required to prove existence of constitutionally valid conviction for crime of violence, and constitutionality of that conviction must be established beyond a reasonable doubt. State v Luther (1982) 31 Wn App 589, 643 P2d 914.

Prosecutor's statement in rebuttal argument on the presumption of innocence and the state's burden of proof in criminal prosecution was not improper. State v Russell (1982) 31 Wn App 715, 644 P2d 1196.

Proof of self-defense does not negate the mental state element in assault in the second degree and due process does not require the state to bear the burden of proving absence of self-defense beyond a reasonable doubt. State v Takacs (1982) 31 Wn App 868, 645 P2d 1109.

Since state has burden of proving lack of lawful excuse as element of bail jumping, it is inappropriate for trial court to resolve issue of whether state has established that element as matter of law, even where explanation offered by defendant for his failure to appear may at best be characterized as hard to believe. State v Primrose (1982) 32 Wn App 1, 645 P2d 714.

Evidence presented by prosecution did not prove essential element of false address beyond a reasonable doubt, and therefore, conviction for obtaining legend drug by giving false address had to be reversed. State v Morgan (1982) 32 Wn App 236, 646 P2d 1387.

9A.04.110 Definitions

80 ALR3d 1220 (corporation's liability to criminal prosecution as affected by punishment or penalty imposed).

Under RCWA 9.95.040, which provides in part that a "knife having a blade longer than three inches" is a deadly weapon, the question of whether a knife having a blade 3 inches or less in length is a deadly weapon depends on the circumstances and is a question of fact. State v Thompson (1977) 88 Wn 2d 546, 564 P2d 323.

Within RCWA 9A.04.110, defining threat for purposes of second-degree extortion as communication of intent to harm substantially the person threatened or another "with respect to his health, safety, business, financial condition, or personal relationship," quoted terms are so interrelated that it was proper for the trial court to include all of those terms in the instruction; and defendant was not prejudiced thereby despite contention that, in connection with alleged threatened loss of jobs, there was no evidence that defendant threatened anyone's "health, safety or business." State v Garvin (1980) 28 Wn App 82, 621 P.2d 215.

CHAPTER 9A.08—PRINCIPLES OF LIABILITY

9A.08.010 General requirements of culpability

57 Wn LR 369 (1982) (knowledge: statutory definition).

Intent, instruction that person intends ordinary consequences of his act which is subject to interpretation as a conclusive presumption violates presumption-of-innocence guarantee, see Sandstrom v Montana (1979) 442 US 510, 61 L Ed 2d 39, 99 S Ct 2450.

Mass.

discipline, organization and government, compensation and equipment, and means of swift transportation. (1917, 43; 1918, 37; 1919, 350, § 110.)

Total Client-Service Library® References—

70 Am Jur 2d, Sheriffs, Police, and Constables §§ 6–10.

CASE NOTES

State policeman assigned to highway safety is member of paid police department.—Under §§ 1, 9, and 9A of the instant chapter, a patrolman in the division of the State police of the department of public safety of the Commonwealth who was assigned to duty as a special officer to stimulate greater public interest in highway safety, was a member of a paid police department within the meaning of an insurance policy excluding coverage "while the Insured is performing any duty as a member or employee of a paid fire or police department." Hayes v Lumbermens Mut. Casualty Co. (1941) 310 Mass 81, 37 NE2d 121.

§ 9A. Division of State Police (State Constabulary), Additional Appointments; Training, etc., of Persons Eligible for Appointment, etc.; Trial and Appeal Procedures; Annual Expenditure.

Whenever the governor shall deem it necessary to provide more effectively for the protection of persons and property and for the maintenance of law and order in the commonwealth, he may authorize the commissioner to make additional appointments to the division of state police together with such other employees as the governor may deem necessary for the proper administration thereof. The appointment of the additional officers herein provided for shall be by enlistment for terms not exceeding three years, and such appointees shall be exempt from the requirements of civil service law and rules. Said additional officers shall have and exercise within the commonwealth all the powers of constables, except the service of civil process, and of police officers and watchmen. The commissioner may, subject to the approval of the governor and subject to the provisions of sections nine O to nine Q, inclusive, make rules and regulations for said additional force, including matters pertaining to their discipline, organization and government, compensation and equipment, and means of swift transportation; provided, that said force shall not be used or called upon for service in any industrial dispute, unless actual violence has occurred therein, and then only by order of the governor or the person acting in his place. Any member of said force violating any of the rules or regulations for said force shall be subject to discipline or discharge in accordance with said rules and regulations. The commissioner, subject to like approval, may select and maintain

Montana

31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes or congregate to preserve peace in one county—temporary control of traffic in cities and towns—investigations of accidents—examination as to ability of person to operate vehicle—inspection of livestock. In addition to the above duties, the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed: if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor of said city or town: The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnaping, illegal transportation of narcotics, or violation of the Dyer act regarding the transportation of stolen automobiles. Provided, that such highway patrolmen shall have no authority and are expressly forbidden to make arrests in labor disputes or in preventing violence in connection with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes or boycotts, and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace.

Patrolmen shall be deemed police officers in making arrests in all offenses occurring on the highways and in the use of motor vehicles or the registration thereof, and for the purpose of serving warrants of arrest in connection with such violations.

The highway patrol shall have the authority to examine any person operating a motor vehicle, who is a repeated violator of traffic regulations or who appears to be mentally or physically deficient, to determine his ability to operate a motor vehicle, and if, after such examination, it reasonably appears to said examiner that said person is unsafe or unfit to operate a motor vehicle, the examiner may recommend to the justice court or district court for issuance of an order prohibiting such person from operating any motor vehicle and revoking his driver's license. A written copy of the order shall be delivered to the registrar of motor vehicles, who shall repossess such person's driver's license and refuse to sell a driver's license to such person until the receipt of instructions from the highway patrol that said order of revocation has been canceled.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943.

NOTE.—See also sections 31-142 to 31-152, relating to revocation of drivers' licenses, which were enacted subsequent to the above section.

Montana

board throughout the section: inserted "supervisory personnel including, but not limited to" in subdivision (1)(a): substituted "supervisory personnel" for "captains, lieutenants and sergeants" throughout the section; deleted a sentence reading "These salaries shall be increased one per cent (1%) per year for each additional year of service" at the end of subdivision (2)(b); inserted "or any other rank" after "patrolman" in subsection (5): substituted "supervisory personnel with the rank of captain or above" for "a captain" in subdivision (7)(c); and made minor changes in phraseology and style.

The 1977 amendment deleted a former subdivision (2)(a) reading "Salaries. (a) The division shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval"; designated the former subdivision (2)(b) as subsection (2); and deleted the former first sentence of subsection (2) reading "The base salary of supervisory personnel and patrolmen shall be fixed by the division with the approval of the state board of examiners."

Repealing Clause

Section 6 of Ch. 188, Laws 1975 read "Section 23-4739, R. C. M. 1947, is repealed."

Effective Date

Section 2 of Ch. 483, Laws 1975 read "This act is effective January 1, 1975."

31-105.1. Salaries paid out of earmarked revenue fund. All salaries of members of the highway patrol shall be paid out of the earmarked revenue fund of the highway department.

History: En. Sec. 1, Ch. 255, L. 1971.

Title of Act

An act to provide that all salaries of members of the highway patrol be paid out of funds of the highway department.

31-105.2. Reimbursement for time spent answering subpoena. A highway patrolman shall receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when he has been called to testify in connection with his official patrol duties. The department of justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.

History: En. 31-105.2 by Sec. 1, Ch. 221, L. 1977.

Title of Act

An act to provide that a highway patrolman receive regular duty pay while responding to a subpoena in a civil or criminal cause when called in connection with his official patrol duties and that the department of justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.

31-110. Offenses for which arrest may be made by patrolmen—when patrolmen police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock. (1) In addition to the above duties, the highway patrol supervisor and all patrolmen may make arrests for the following offenses if committed in the presence of the supervisor or any of the patrolmen; if committed in a rural district, upon the request of a peace officer; or if committed in a city or town of less than 2,500 inhabitants, upon the request of any peace officer or the mayor of the city or town: deliberate homicide, assault with a deadly weapon, arson, criminal mischief, burglary, theft, kidnapping, illegal transportation of narcotics, or violation of the Dyer Act regarding the transportation of stolen automobiles. Such highway patrolmen have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

(2) Patrolmen are considered police officers for the purpose of making arrests for all offenses occurring on the highways or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

(3) Patrolmen may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. If the patrolmen have good reason to believe that livestock or livestock products have been stolen, they may take possession of the same until the livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

(4) A highway patrolman has the same authority to enforce provisions of the motor carrier's licensing law as that granted the public service commission under 8-103. The highway patrol bureau shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 280 and once by Ch. 359. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1965 amendment deleted from the end of the first paragraph a clause reading "and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace"; and deleted the former third paragraph, for text of which see parent volume.

Chapter 280, Laws of 1977, added the last paragraph.

Chapter 359, Laws of 1977, inserted the subsection designations; substituted "deliberate homicide" for "murder" near the middle of the first sentence of subsection (1); inserted "criminal mischief" and substituted "theft" for "larceny" near the middle of the first sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 2 of Ch. 63, Laws 1965 repealed all acts parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 63, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Cross-References

Authority of members of Montana university system security department to issue traffic citations, sec. 75-8514.

Highway patrol functions transferred to division of motor vehicles, sec. 82A-1206.

Purpose of 1977 amendment by chapter 280, Sec. 8-132.

31-112. Duty of patrolman upon making an arrest, etc.

Commitment to Jail

Where driver stopped for speeding late at night had an out-of-state license, had no Montana address except "General Delivery," and could not post an appearance bond, arresting officer had no duty to sit with the driver until his friend arrived with money for bond, and commitment to jail was proper. State ex rel. Kotwicki v. District Court of First Judicial District, — M —, 552 P 2d 694.

31-112.1. Check in lieu in cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrolmen warrant. In default of the payment of the fine, or if the officer carrying out the execution certifies that there is no property of the defendant out of which to satisfy the fine, the adjutant general shall issue a commitment for placement of the delinquent in a specified guardhouse or jail. The warrant of commitment for the default shall specify the amount in dollars of the fine or unpaid balance of it and the delinquent shall remain in the custody of the keeper or warden of the guardhouse or jail one day for each $5 of the unpaid sum.

(c) Whenever the sentence of a general court-martial includes imprisonment in a jail or guardhouse, and the sentence is approved by proper authority, the adjutant general shall issue an appropriate commitment, directed to the authority in charge of the jail or guardhouse charged with carrying out the sentence and the authority shall make return of the commitment to the adjutant general. If the sentence includes imprisonment in a military guardhouse, the sentence shall be executed by order of or arrangement made by the officer approving the sentence.

(d) All fines levied and collected under this section shall be paid to the Department of Revenue for deposit in the state general fund.

(e) For each day of duty as a member of a general court-martial, or as a witness under summons from the president or judge advocate of the court, officers and enlisted persons shall be paid as provided in § 260(b) and (c) of this chapter.

(f) The presiding officer, or recorder of a military board appointed to conduct an investigation or survey, or an officer detailed for that purpose may administer oaths to any witness attending to testify in the investigation.

(g) All expenses incident to conduct of military boards shall be paid for upon proper vouchers drawn against the state general fund.

(h) If a member of the National Guard or Naval Militia is prosecuted by civil or criminal action for an act performed or committed by him or an act caused, ordered or directed by him to be done or performed in furtherance of and while in the performance of his military duty, the expenses of the defense of the action, civil or criminal, including attorney fees, witness fees for the defense, defendant's court costs and all costs for transcripts of records and abstracts on appeal by the defense, shall be paid out of the state general fund. (§ 35 ch 150 SLA 1955; am §§ 4 — 7 ch 19 SLA 1968; am § 12 ch 141 SLA 1972; am § 17 ch 34 SLA 1973)

Sec. 26.05.340. Miscellaneous provisions. (a) In no case may any part of the Alaska National Guard, Alaska Naval Militia or the state militia be used against any labor organization or for the purpose of strike breaking within the state.

(b) No part of the state military forces may leave the state with arms and equipment without the consent of the commander in chief.

Alaska

(c) A person who, either by himself or with another, wilfully deprives a member of the National Guard or Naval Militia of his employment or prevents his being employed by himself or another, or obstructs or annoys the member of the National Guard or Naval Militia or his employer in respect of his trade, business or employment, because the member of the National Guard or Naval Militia is a member, or in any way dissuades any person from enlisting in the National Guard or Naval Militia by threat or injury to him in respect of his employment, trade or business, if he so enlists, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $100.

(d) All matters relating to the organization, discipline and government of the National Guard or Naval Militia, not otherwise provided for by the laws of the United States, this chapter, or regulations issued by the president shall be governed by regulations issued by the adjutant general and approved by the governor, and the regulations when adopted, have the same force and effect as though enacted in this chapter. (§ 36 ch 150 SLA 1955; am §§ 18 — 20 ch 34 SLA 1973)

Sec. 26.05.345. Civil Air Patrol. The adjutant general shall make the necessary administrative arrangements for maintaining liaison between the state and the Civil Air Patrol and the expenditure of funds appropriated to the department for the state contribution toward the support of the authorized activities of the Alaska Wing, Civil Air Patrol, under its charter. (§ 3 ch 70 SLA 1965; Executive Order No. 33 (1968))

Revisor's note. — The following executive order, signed by Governor Walter J. Hickel, was transmitted to the legislature on January 23, 1968. It was not disapproved by the legislature during the 1968 session and therefore became law under the provisions of sec. 23, art. III of the Alaska Constitution and AS 24.30.130.

"EXECUTIVE ORDER NO. 33. Pursuant to the authority vested in me by Sec. 23, Art. III, Constitution of the State of Alaska, the State's responsibilities toward the Alaska Wing, Civil Air Patrol, as set forth in AS 44.33.110, are hereby transferred from the Department of Commerce to the Department of Military Affairs. The effective date of such transfer shall be July 1, 1968.

"Dated at Juneau, Alaska this 22nd day of January, 1968."

This section, except for the designation of the responsible official, formerly was AS 44.33.110.

Editor's note. — Chapter 70, SLA 1965, included the following: "Sec. 1. Purpose. The Civil Air Patrol is an auxiliary of the United States Air Force operating under charter from Congress, and it operates in all states and the District of Columbia and the Commonwealth of Puerto Rico. The Civil Air Patrol has as its purpose the organizing of public-spirited citizens in civil aviation into a volunteer semi-military organization to assist in civil defense efforts, train teen-age cadets in pre-flight instruction, conduct missing-aircraft search service, and assist in search and rescue missions, and special missions for state and federal agencies. It is the purpose of this Act to make formal provision for the administration of the financial support of the state's participation in the program of the Civil Air Patrol."

Sec. 26.05.350. Short title. This chapter may be cited as the Military Code of Alaska. (§ 1 ch 150 SLA 1955)

INDIANA

10-1-1-7.5 Official uniform hat and insignia; violation

Sec. 7.5. The superintendent of state police shall file with the secretary of state a drawing or photograph and a worded description, including the color, of the official uniform hat and insignia to be worn by state police officers while on duty. A person who wears or uses in public the hat or insignia, or any imitation, reproduction, or facsimile thereof, except a duly appointed member of the state police department authorized by the superintendent to wear the hat or insignia, commits a Class C infraction. After the drawing or photograph and worded description of the hat and insignia is filed with the secretary of state the hat and insignia may not be changed by the state police department. *(Formerly: Acts 1971, P.L.142, SEC.1). As amended by Acts 1978, P.L.2, SEC.1002.*

10-1-1-10 Enforcement powers; transfer of control and direction of officers and members

Sec. 10. The officers and police employees of the department have all necessary police powers to enforce the laws of Indiana for the regulation and use of vehicles, and for the protection of the surface or other physical portion of the highways of Indiana, and without writ or warrant to arrest for violation thereof when committed in their presence. The police employees of the department shall prevent and detect offenses, apprehend offenders, enforce the laws, and perform other duties imposed upon them by law, and to this end, police employees of the department have in any part of the state the same powers with respect to criminal matters and the enforcement of the laws relating thereto as sheriffs, constables, and police officers have in their respective jurisdictions, and have power to act as agents for the state on return of parolees, fugitives from justice, and persons extradited to Indiana for offenses. Any warrant of arrest or search warrant may be executed by any police employee of the department in any part of the state, according to the tenor thereof, without endorsement. They are subject to the call of the governor, and the governor may assign to the department other police duties as the executive department may deem advisable, including the duties now performed by deputy fire marshals. They have power to arrest, without warrant, any person committing or attempting to commit in their presence or view a violation of any of the laws of Indiana. And, under order of the superintendent, they may cooperate with any other department of the state or with local authorities. They may not exercise their powers within the limits of any city in labor disputes, nor may they suppress rioting and disorder except by direction of the governor or, upon the request of the mayor of any such city with the approval of the governor, or if the governor is not available, with the approval of the lieutenant-governor. And without the limits of any city they may not exercise their power in labor disputes except by direction of the governor, or the request of the judge of the circuit court of the county with the approval of the governor, or if the governor is not available, with the approval of the lieutenant-governor. The control or direction of the officers or members of the department may not be transferred or delegated to any other agency or officer of the state or any subdivision thereof. *(Formerly: Acts 1945, c.344, s.10). As amended by Acts 1978, P.L.2, SEC.1003.*

10-1-1-12 Bureau of criminal identification and investigation; systems; records

Sec. 12. The bureau of criminal identification and investigation shall maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The bureau shall obtain from whatever source procurable, and shall file and preserve for record, plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements, and other information about all persons who commit:

(1) felonies under the Indiana Code; or

(2) Class A misdemeanors under IC 35.

IOWA

Chapter 732

LABOR BOYCOTTS AND STRIKES

Sec.

732.1 Contracting to boycott or strike in sympathy.

732.2 Carrying out boycott or strike.

732.3 Jurisdictional strike or slow-down.

732.4 Penalty.

732.5 Injunction.

732.6 Hiring professional strikebreakers prohibited.

Disposition tables are provided in the front part of this volume for use in tracing the subject matter of repealed and renumbered sections into the criminal law revision of 1976.

This chapter was not enacted as part of the Criminal Code but was transferred here from chapter 736B, Code 1977.

732.1 Contracting to boycott or strike in sympathy

It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents or members thereof, to enter into any contract, agreement, arrangement, combination or conspiracy for the purpose of, by strikes or threats of strikes, by violence or threats of violence, by coercion, or by concerted refusal to make, manufacture, assemble, or use, handle, transport, deliver or otherwise deal with any articles, products or materials:

1. To force or require any person, firm or corporation to cease using, selling, handling, transporting or dealing in the goods or products of any other person, firm or corporation, or

2. To force or require any person, firm or corporation to cease selling, transporting or delivering goods or products to any other person, firm or corporation, or

3. To force or require any employer other than their own employer to recognize, deal with, comply with the demands of, or employ members of any labor union, association or organization, or

4. To force or require any employer to break an existing collective bargaining agreement which such employer may have with any labor union, association or organization.

Historical Note

Derivation:

Codes 1977, 1975, 1973, 1971, 1966, 1962, 1958, 1954, 1950, § 736B.1.
Acts 1947 (52 G.A.) ch. 297, § 1.

Transferred from Code 1977, § 736B.1.

Library References

Labor Relations ⟹1054.

C.J.S. Labor Relations § 1008.

National Association of Home Builders
15th and M Streets, N.W., Washington, D.C. 20005
Telex 89-2600 (202) 822-0400

Harry Pryde
1983 President

November 16, 1983

The Honorable Charles E. Grassley
Chairman
Subcommittee on Administrative
Practices and Procedures
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Grassley:

On behalf of the more than 117,000 members of the National Association of Home Builders, I am submitting these comments on S.462, a bill which would amend the Hobbs Act to extend its coverage to acts or threats of violence to persons or property during the course of legitimate labor disputes. NAHB supports legislation that would amend the Criminal Code to subject all persons who commit acts of violence or destruction of property due to labor management relations to federal penalties.

The Hobbs Act, which was enacted in 1946, makes it a felony under federal law to obstruct interstate commerce by robbery or extortion, including the use of physical violence against persons or property or threats of violence for these purposes. Furthermore, the act covers "wrongful" taking of property, whether or not against a person's will, by use of threats of violence. The legislative history of the Act makes clear that the intent of the original Act was to protect interstate commerce from robbery and extortion perpetrated by anyone -- including union members.

The Hobbs Act had been applied by federal courts to labor disputes involving the use of threats to extort unnecessary labor costs. However, in 1973 the Supreme Court ruled in U.S. v. Enmons that the Act did not apply to violence to persons or property occurring in the course of a normal labor dispute, where a legitimate labor purpose such as higher wages, and not the specific wrongful purpose of either extortion or robbery, is present.

NAHB believes the Supreme Court erred in its judgment to exclude extortionate activities in the course of legitimate collective bargaining disputes from federal penalties under the Hobbs Act. Extortion, in the form of the taking of another's property through violence or threats of violence, is a crime that must be universally condemned and that our government has an obligation to prevent. The Supreme Court's position that the legitimacy of the objective, such as higher wages for work performed, justifies the means, such as willful destruction of an employer's property, is an unacceptable and unfair decision. All citizens deserve equal protection under the criminal laws of the United States. The effects upon the victim of violence or threats of violence are the same whether the goal is outside of or during the course of collective bargaining.

S.462 is a bill that would overturn the Supreme Court's decision in U.S v. Enmons to extend the Hobbs Act to cover acts or threats of violence to persons or property in the course of otherwise legitimate labor disputes. It is true that the use of violence or threats of violence whether or not in support of a labor dispute is already unlawful under the laws of every state. However, the nature of the offense and the differences among the various states and their laws do, however, provide varying degrees of punishment and state enforcement. In addition, state and local authorities are often not equipped or strongly motivated to deal with the emotionally heated confrontations between competing interest groups within their communities. Violence or threats of violence in the course of a labor dispute ought to be a violation of federal law. In many instances of labor violence the perpetrators and evidence are scattered throughout the states and only the resources of the federal government can successfully combat such crimes. Therefore, a uniform law and uniform prosecution throughout the country would be in the public interest and would do a much better job in combating such violence.

The legislative history of the Hobbs Act makes clear that the measure was not intended to interfere with labor's right to strike and picket peacefully or to take any other legitimate concerted action. The proposed Hobbs Act amendments as set forth in S.462 would not affect or limit the right to strike. It would, however, prevent a strike from acting as justification for unions exerting unfair and otherwise illegal pressure on an employer.

In conculsion, NAHB feels the time has come for Congress to amend the Hobbs Act to make it clear once and for all that violence, no matter what the objective, is a crime. The Enmons decision must be overturned so that management and labor have the right to full protection of the law when extortionate actions are perpetrated to influence decisions. S.462 is legislation drafted with this intention and would punish all persons who resort to violent extortionate means to obtain the property of others. NAHB urges the Committee to give this legislative proposal favorable consideration.

Sincerely,

Harry Pryde

Harry Pryde
President

Date: September 24, 1983
City: Portland, Oregon

NAHB Resolution

Title: Hobbs Anti-Extortion Act
Original Sponsor: Special Committee on Employer/Labor Management

WHEREAS, the Hobbs Anti-Extortion Act enacted in 1946, as part of the federal criminal code, outlaws violence and extortion in interstate commerce; and

WHEREAS, in 1973 the United States Supreme Court in United States v. Enmons ruled that the Hobbs Act does not apply when violence or force is used during a lawful strike to coerce an employer's agreement to legitimate collective bargaining demands; and

WHEREAS, union related violence which occurs during a strike is now subject to state and local laws only; and

WHEREAS, Congress did not intend to exempt labor unions from violations of interstate commerce as set forth under the Hobbs Act; and

WHEREAS, federal legislation, S.462 and H.R.287, has been introduced which would repeal the "Enmons" decision and subject strike related violence to penalties under the federal criminal code,

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders supports legislation amending the federal criminal code to subject all persons who commit acts of violence and destruction of property due to labor management relations to federal penalties.

Board of Directors Action: Approved

December 1983

Union Violence: A Review Article

by

Morgan O. Reynolds

Texas A&M University

There is a long history of violence associated with labor disputes in this country. Among the storied events are the Homestead strike of 1892, the Pullman strike of 1894, the Ludlow Massacre of 1914, and the "Memorial Day Massacre" at the Republic Steel Works in 1937. There are an uncounted number of lesser known incidents, like the railway shopcraft strike of 1922 with its reported 1,500 cases of violent assault to kill, 51 cases of dynamiting and burning railroad bridges, and 65 kidnappings.[1]

Despite this long and bloody history, there has been a curious absence of analysis about the purpose and consequences of the violence still occurring in labor disputes. Clark Kerr, for example, has written:

> Violence also is to be condemned. It has *decreased* greatly as a union tactic, however, and is subject to control by the many devices civilized man has created to insure law and order. These are issues and they will be for a long time; they deserve attention but they are *peripheral* to the main contemporary controversy.[2] (emphasis added)

Although a scattered literature on union violence (often termed "militance") exists, the issue has not received sustained attention.[3] A survey of all the issues of *Industrial Relations* and *Industrial and Labor Relations Review* reveals no in-depth article that analyzes violence in labor disputes. Analysis of labor violence is important, both because it continues and because of its costs. The issue has not always been neglected. The 19th century writer, Henry George, for example, wrote: "Those who tell you of trades unions bent on raising wages by moral suasion alone are like those who would tell you of tigers who live on oranges."[4] In the twentieth century, a small group -- W. H. Hutt, Ludwig von Mises, Henry C. Simons, and Sylvester Petro among them -- has argued that threats and violence are an integral part of unionism. In 1922, for example, Mises wrote:

> The weapon of the trade union is the strike. It must be borne in mind that every strike is an act of coercion, a form of extortion, a measure of violence directed against all who might act in opposition to the strikers' intentions. For the purpose of the strike would be defeated if the entrepreneur were able to employ others to do the work of the strikers, or if only a section of the workers joined the strike. The long and short of trade union rights is in fact the right to proceed against the strikebreaker with primitive violence, and this right the workers have successfully maintained....in the last few decades it has been established everywhere, less by explicit legislative sanction than by the toleration of public authority and the law.[5]

What we have needed is a well researched book that considers the issue of union violence on a fundamental level, examining the record carefully, without ideological blinders. Now we have it, in Union Violence: The Record and the Response by Courts, Legislatures, and the NLRB (Philadelphia, PA: Industrial Research Unit, Wharton School, U. Pennsylvania, 1983). Armand J. Thieblot, Jr., an Associate Professor of Management at the University of Maryland, and Thomas R. Haggard, Professor of Law at the University of South Carolilna, have constructed an extensive description and analysis of the pattern of contemporary union violence and the legal response to it. Although well-documented and dispassionate in tone, the book is sometimes startling, even horrifying in its recounting of violence by unionists. The conclusions of the authors are convincing: labor violence is substantial, systematically applied, not diminishing, and the law tacitly allows unions wide latitude to use coercive techniques.

The book has 15 chapters, 1 appendix, and 18 tables in its 540 pages. Chapters 1-7, primarily written by Thieblot, describe the violence, chapters 8-12, written by Haggard, are the legal chapters, and the final three chapters sum up the evidence, the legal situation, and make recommendations to diminish union violence. Section I below details the Thieblot-Haggard evidence about union violence, section II describes their legal analysis, and section III evaluates the book and assesses its place in the larger context of research on industrial relations.

I

Chapter one begins with the notion that employers were the primary cause of the violence in the "bad old days" of capitalism. Violence supposedly would cease when the freedom of employers to "bust the union" was curtailed. This is falsified, say the authors, by the fact that unionists continue to initiate threats, force, and violence on a scale with no sign of diminishing. Unions use violence as an organizing tool, as a bargaining tactic, as an attention getter to generate pressure for a quick settlement, to enforce "solidarity" among strikers, as a warning, to disrupt production at nonunion companies, to instill fear, and to demonstrate "leadership" in internal union disputes. The authors suggest that a number of factors are associated with higher probabilities of violence: industries with many small firms, high union wage rates compared to nonunion rates in the same industry, high local unemployment,nonstriking employees who work alone (for example, truck drivers), and businesses that attempt to operate during a strike.

Chapter 2 examines some fifty-five of the three hundred cases heard by the NLRB under Taft-Hartley's section 8(b)(1)(A), which declared certain kinds of violence unfair labor practices. Many cases concern mass picketing, with physical attacks by groups of strikers against single nonstrikers being common. Other union targets include supervisors, suppliers, customers, casual passers-by, and union members. The worst offenders turn out to be the United Mine Workers, the Teamsters, and Puerto Rican unions, mainly the *Union Nacional de Trabajadores*. In some instances, the police and civil authorities refused to make arrests even when nonstrikers were clearly attacked by identifiable individuals.

The authors employ statistical data assembled by the National Right to Work Legal Defense Foundation. While there may be biases in the data, they are the only systematic records available on labor violence. The NRTWLDF classification relies on press accounts to count incidents. Thus, if a newspaper reports "vandalism, arson throughout 6-month strike," it is counted as one incident of violence. Multiple press accounts are screened to avoid double-counting, but "at times the same incident does appear to have been counted twice" (p. 52). The authors claim that the "listings appear to be relatively accurate in reporting major incidents -- such as a bombing or a shooting -- but less accurate in reporting minor incidents." (pp. 51-52). The 1975-1981 data are still being updated with newly found information for 1975-1981, and since the book has been published the number of incidents has increased by 15 percent for the seven year period. The data include intraunion or interunion incidents and incidents in which strikers were victims of violence (e.g., a picket blocking a truck is run over), as well as violence aimed at nonstrikers.

Between 1975 and 1981 the NRTWLDF record shows 2,598 incidents of violence involving labor unions. There were 386 known incidents in 1975, followed by 230, 234, 248, 483, 442, and 575 from 1976 to 1981, an average of 371 per year. The data show 49 deaths directly due to labor violence, $15.2 million in estimated damage to company plant and equipment, 2,732 instances of damage to automobiles, 133 cases of managers' and nonstrikers' homes being firebombed, shot at, or vandalized, hundreds of cases of sabotage and vandalism, and thousands of shots fired. Thirty-one different labor unions and labor organizations were involved, led by the Teamsters with 384 total incidents, the United Mine Workers with 204, the United Steel Workers with 130, the United Automobile Workers with 128, and the American Federation of State, County, and Municipal Employees with 116. Adjusting for membership size, the authors find that the Mine Workers lead with 7.36 violent incidents per 10,000 members, followed by the Hospital and Health Care Employees with 5.70, the Fire Fighters with 4.48, the Steel Haulers (FASH) with 3.20, and the Oil, Chemical and Atomic Workers with 2.88 per 10,000 members.

Chapter 4 examines the United Mine Workers. Mining coal has always been dangerous and dirty work done by generally strong and rough employees. The authors argue that the UMW still relies on bloodshed, dynamite, and intimidation to coerce acceptance of the union's demands. Unionized mines do not try to operate during a strike, so most of the violence is directed at nonunion employees, nonunion mines, and rival labor organizations. During the 1981 strike, for example, nonunion miners and mine owners armed themselves or shut down their operations for the duration of the strike. Truck convoys used lead trucks with five-foot long magnets to sweep up nails and spikes on the road. When UMW ambushes and gun battles broke out, Kentucky Governor John Y. Brown adopted a policy of what he called strict neutrality, declaring, "We're not going to camp on one side or the other." (p. 114). A nonunion mine operator protested, "The concept of neutrality toward breaking the law is not found in any statute or practice in our society." (p. 116).

The building trades unions also target nonunion work sites since unionized employer usually do not try to operate during a strike. An attorney for the construction unions said, "What we want to do, quite simply is erase the competitive advantage Schnabel [a large open shop contractor] has by virtue of his hiring workers at substandard wages." (P. 157). When asked how nonunion contractors determine where they will bid on work, they readily reply, "Where we can be reasonably sure of police protection." (p. 165). Chapter 5 tells of violence and vandalism by firefighters, police, garbage collectors, and medical care workers in government employment. The most striking observation is that "the principal weapon used by firefighters in their labor disputes seems to be fire." (p. 136). Chapter 7 describes violence in transportation and manufacturing. Among the incidents receiving detailed treatment are assorted Teamster strikes, a Machinists strike at United Aircraft, three USW strikes, and shootings by Steel haulers and independent truckers during strikes.

II

Chapters 8-12 could be summed up in the words of Thomas Jefferson: "The execution of the laws is more important than the making of them."[6] The Norris-LaGuardia Anti-Injunction Act was signed by President Hoover on 23 March, 1932, the culmination of a fifty-year campaign by trade unionists against "government by injunction." The law gave unions greater latitude to use their tactics by limiting the ability of private plaintiffs to gain equitable relief from union aggression in the federal courts. Although private plaintiffs could seek relief in the state courts, the option was diminished by the federal preemption doctrine and the passage of little Norris-LaGuardia acts in many states. A primary rationale for the act was that it would reduce Federal intervention in labor disputes and leave more to state and local authorities, since the Federal courts' involvement in injunctions appear~~ing~~ed an unwarranted anomaly then. This argument is anacronistic to Haggard because a central premise of modern industrial labor relations law is that labor disputes are matters of national concern which transcend the jurisdictional limits of local authority.

Chapter 9, which tells the tale of judicial exemption of unions from the Anti-Racketeering and Hobbs Acts, is fascinating. The Anti-Racketeering Act of 1934 included language to exempt unions from prohibitions against the use of force and in the Local 807 case (1942) the Supreme Court, in more tortured language than the Act itself, emasculated the Act as a restriction on union violence. To put it bluntly, the Court embraced the idea that the end justifies the means. The Court declared, in part: "The history of labor disputes is studded with violence which unhappily is not yet obsolete; but, although the means employed may be the same as those here condemned, the end is always different, for it is to secure work on better terms." (p. 250).

The Congressional reaction to the Local 807 case was swift and negative, culminating in the Hobbs Act of 1945. Congress completely rewrote the law and took special pains to eliminate the specific language on which the Supreme Court based its decision. Professor Haggard's legislative history of the Act shows that Congress intended that unions, as brokers of labor services, be as limited in their use of force as other brokers or sellers of commodities; in all cases, forced exchanges were to be prohibited as extortion.

Judicial hostility, however, to the application of Hobbs to union violence continued to surface, culminating in U.S. v. Enmons (1973). The defendants were indicted for firing high-powered rifles at three utility company transformers, draining the oil from a company transformer, and blowing up a transformed substation owned by the company — all in the pursuit of higher wages and other benefits from the company. The indictment was dismissed by the district court on the theory that the Hobbs Act did not prohibit the use of violence in obtaining "legitimate" union objectives. On appeal, the Supreme Court affirmed the lower court's ruling. The Court's distortion of the legislative history of the Hobbs Act particularly disturbs Haggard, as it did Justice Douglas, who wrote in his dissent:

> At times, the legislative history of a measure is so clouded or obscure that we must perforce give some meaning to vague words. But where, as here, the consensus of the House is so clear, we should carry out its purpose no matter how distasteful or undesirable that policy may be to us. (p. 280).

Amendments to the Hobbs Act continue to be introduced in the Congress and extortion has been reworded in proposed revisions of the federal criminal code, for example, "It is not a defense to a prosecution for an offense under this section that the conduct constituting the offense was in furtherance of a legitimate objective or activity." (p. 298). None of this legislation has passed.

The tolerant attitude toward union violence makes private measures to discourage misconduct more important, but this avenue has been diminished by restrictions on discharge of employees. Prior to the 1930s, employment relations received the same legal treatment as other business transactions under the "at will" doctrine. The employer's right to discharge was absolute, for good cause or not, and conversely, an employee could quit at any time, for any reason, without notice. But that is no longer true. Labor arbitrators commonly term discharge as the "capital punishment" of the industrial relations world. Therefore, most arbitrators do not treat "minor" strike violence seriously and excuse people from responsibility for their own behavior. The confusion between causal analysis and legal responsibility is illustrated by this statement from a 1975 arbitration ruling: "Although the Company had a legal right to keep the plant open, its decision to do so gives it some share of responsibility for creating an environment conducive to violence." (p. 306). In general, employers have a private arbitration system which they probably never banked on, and the public sector is following in the same direction. The NLRB often uses reinstatement as a remedy for an employer declared guilty of an unfair labor practice, called the Thayer doctrine, thereby protecting employees from discharge for various kinds of strike and picket line misconduct. The courts tend to be tougher on strike violence than the NLRB, but the whole issue is subject to discretion and ad hoc rulings.

Professor Haggard's discussion of the unfair labor practices provision shows that the Board and the courts tend to be lenient, as witnessed by their references to "picket line horseplay," "exuberance short of coercion," and "leeway for impulsive behavior." Punishments for violations tend to be mild -- cease and desist orders (long after the events transpired), or posting notices. Rarely is a union's protected bargaining status threatened or are backpay awards imposed on unions as "make whole" remedies for victims. Unfortunately, there are no systematic statistics on the amount of compensation or fines paid by unions, but the probability of conviction appears so small and the punishments so trivial that unions confidently can ignore these financial penalties.

Criminal penalties for violence are occasionally applied, but convictions are difficult (expensive) to achieve, partly because the standard of proof is stricter (beyond a reasonable doubt) than the civil rule of "the preponderance of evidence." Unions occasionally lose in civil damage suits but there are problems with suing unincorporated associations and with the implied authorization or agency doctrine. This chapter, 12, is not as extensive as the other legal chapters.

And what to do about all this? The authors urge that unions adhere to the "conventional ethical norm against initiation of physical violence." (p. 494). Indulging in further optimism, Thieblot and Haggard recommend a change in attitude by those writing and enforcing our nation's laws because "The law's tacit approval of 'minor violence' only serves to guarantee its recurrence." (p. 495). More substantively, the authors recommend repeal of the federal anti-injunction statute and similar state statutes. Calling the Enmons decision "an affront to American jurisprudence," the authors urge that Congress try to amend the Hobbs Act to counter the Supreme Court. Further, they suggest removal of the contractual and statutory limits on the liberty of an employer to discharge employees who have committed strike and picket line violence. Another recommendation is that the NLRB repudiate the Thayer Doctrine and that unions with histories of violence lose their statutory privileges as exclusive bargaining representatives. While these proposals are unexceptional and would discourage union violence, the chance of their adoption in a political and intellectual environment of legislation designed to promote worker cartels for 50-plus years appears slim.

III

This book is a first rate contribution to our knowledge, but there are shortcomings: inadequate data for econometric work, insufficient attention to the cartel theory of unionism, and the lack of an explanation for the failure of scholars to investigate union violence.

If critics accept the authors' data base as factually accurate, their interpretation is likely to be different. Pro-union scholars may be heartened that there were "only" 400 violent incidents associated with unions annually from 1975 to 1981. For comparison, there were 13 million felony crimes reported annually in the early 1980s, according to the FBI Crime Reports, and victimization surveys show that there are as many as 40 million crimes per year. Between 1975 and 1981 strikes averaged 4,500 per year, so critics can argue that fewer than 10 percent of strikes involved violence. The question of how serious union violence is depends on the choice of a reference point. If Haggard and Thieblot were explicit, I believe that their counterfactual or reference point would be zero union violence. Although millions of wrongs do not make a right, the industrial relations community will insist that union violence is not much of a problem. This is incorrect, I believe, but the authors may be vulnerable on this score.

Another shortcoming of the data is that they are too fragmentary to be of much use in econometric models. For example, if wider data were available on a cross section basis, geographically or by industry, or in time series form, various hypotheses about the determinants of violence could be tested. As with the economics of crime, a primary question would be the deterrent effect of the legal response to violence.

These problems will diminish over time as other researchers build on the work of Haggard and Thieblot. The association between unionism and violence is clearly accounted for by the monopoly or cartel theory of unionism. And there is no competing general theory of unionism in sight. In order to force buyers to pay more for labor services than is necessary, unions must restrict or cut-off the supply of labor to struck enterprises. The only effective way this can be done is through threats and violence because many qualified U.S. workers are willing to defy picket lines and accept wages and working conditions below those demanded by unionists. The employer's (and consumer's) interest, by contrast, is to preserve access to a free labor market and maintain peaceful conditions so that work and production can proceed smoothly and economically.

Ordinarily, only government can enforce protectionist privileges in the long run, but unions have done better than most cartels and monopolies because they have been tacitly granted unparalleled privileges of coercion. The ingenuity of legislators and jurists in preserving the facade of law but deflecting its bite on unions is a fascinating chapter in human deception. Outbreaks of violence do, however, show the incomplete power of unions relative to producer interest groups like the American Medical Association, tree pruners, cosmeticians, and so on, that rely on licensing laws rather than strikes. In the event of interlopers in their market, they merely telephone the government for a policeman to restrain entrants. If unions relied more on the state to restrain competitors, then criminals and other specialists in private violence would be fewer among unions.

Why does the industrial relations community have so little to say about the economic theory of unions and the role of labor violence? Haggard and Thieblot do not try to answer this question. Nevertheless, the relative inattention of scholars to union violence is part of the factual record and deserves an explanation, no matter how inadequate. One reason is honest ignorance and confusion. Many industrial relations scholars seem to be unaware of economics, and economists share the blame to the extent that they fail to explain the logic of union actions clearly or lack the courage to point out unfashionable truths. A more important factor, though, is that the industrial relations scholars who understand the monopoly or cartel theory ignore it rather than refuting it.

Violence provides intellectuals with evidence that workers are alienated from the market system, and therefore supports the oft-repeated argument that unions and labor regulations are necessary to deflect the revolutionary potential of workers.[7] The Thieblot-Haggard book, however, implies a different explanation for labor violence, one in concert with economic theory. When the strikers who vandalize, threaten, and assault others are routinely reinstated in their jobs with back pay, it is a formula for irresponsibility; maybe savagery is not too strong a word. Incentives account for violent behavior, not alienation from work or the economic system.

Academic incentives play a role too. The current system of mediating, conciliating, fact-finding, arbitrating, and other industrial jurisprudence machinery provides power and income for successful industrial relations scholars. These consulting opportunities help to explain the superficial nature of the academic literature. As Thomas Sowell puts it, "The political advantages of intellectuals derive precisely from their not being recognized as interested parties."[8]

These assertions of academic bias, by which I mean the continuing failure to raise questions or conduct research which would challenge the major assumptions of collective bargaining, are supported by the report of a recent conference attended by the leading figures in industrial relations.[9] The conference seemed to be an emergency summit about the American industrial relations system, which "seems, at least superficially, to be undergoing rapid change." (p. 125). The participants were concerned about the ongoing shrinkage in unionism and the associated changes in industrial labor practices. Among the remarks at the conference were that the conferees thought that "normal adversarial relationships" were healthy (p. 128), that conferees devoted most of their attention to the union side, perhaps "because the conferees identified strongly with free collective bargaining among equals, and so wished to help the underdog," (p. 129), that "since wage uniformity was viewed as one of collective bargaining's greatest accomplishments, many conferees viewed with considerable dismay the increasingly chaotic nature of wage relationships," (p. 130), and that "... on the political front unions push for broad sets of objectives in the interest of workers and society generally." (p. 130).The report concluded with the following statement:

> To the extent the conference had a theme, it was that of continuing faith in the efficacy of collective bargaining as the cornerstone of the American industrial relations system.... The conference closed with what came close to a consensus: our economic and social problems can best be resolved through tripartite union-management-government discussion and collaboration. No better model was presented. (p. 131)

Collaboration by top government, business, and labor decision makers can be labeled the corporate state, a system which generally putsthe interests of influential producers first and consumers' interests last. If the leading scholars in industrial relations found "no better model," they might begin with Adam Smith's Wealth of Nations. The odds that they will take this suggestion seriously may be nil, but I also commend Haggard and Thieblot's Union Violence to them. For people genuinely interested in identifying the "underdog" in our society, the Haggard-Thieblot book might encourage some doubts about whether our self-interested, well-paid unionized workers, with their special privileges to coerce, are victims of injustice at all. Perhaps the fate of those excluded from unionized employment by union threats and violence should be considered too.

Notes

1. Robert F. Koretz, editor, Statutory History of the United States, Labor Organizations (New York: Chelsea House Publishers, 1970), p.

2. Clark Kerr, "Unions and Union Leaders of Their Own Choosing," in Lloyd G. Reynolds, Stanley H. Masters, and Collette Moser, editors, Readings in Labor Economics and Labor Relations (Englewood Cliffs, NJ: Prentice-Hall, 1974), p. 317.

3. The primary reference is Philip Taft and Ross, "American Labor Violence: Its Causes, Character, and Outcome," pp. 281-395 in Hugh Davis Graham and Ted Gurr, The History of Violence in America (New York: F.A. Praeger, 1969); also see Graham Adams, Age of Industrial Violence, 1910-1915, (New York: Columbia University Press, 1966), Sidney Lens, The Labor Wars, (Garden City, NY: Doubleday, 1973), Joseph Finley, The Corrupt Kingdom, (New York: Simon and Schuster, 1972).

4. Henry George, The Condition of Labor: An Open Letter to Pope Leo XII in The Land Question (New York: Robert Schalkenbach Foundation, 1982 [1891]), p. 77.

5. Ludwig von Mises, Socialism (Indianapolis: Liberty Classics, 1981 [1922]), p. 435.

6. Thomas Jefferson, Letter, 1789; cited in Lewis C. Henry, editor, Best Quotations (Garden City, NY: Doubledya, 1945), p. 128 in Fawcett Premier edition.

7. See, for example, Robert M. MacDonald, "An Evaluation of the Economic Analysis of Unionism," Industrial and Labor Relations Review, 19 (April 1966), pp. 335-47.

8. Thomas Sowell, Knowledge and Decisions (New York: Basic Books, 1980), p. 362.

9. "The Future of Industrial Relations: A Conference Report," Industrial Relations, 22 (Winter 1983), pp. 125-31. Also see Myron Lieberman, "Academic Bias in Public Sector Labor Relations," Government Union Review, 3(Fall 1982), pp. 3-17.

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

STROM THURMOND, S.C., CHAIRMAN

CHARLES McC. MATHIAS, JR., MD.
PAUL LAXALT, NEV.
ORRIN G. HATCH, UTAH
ROBERT DOLE, KANS.
ALAN K. SIMPSON, WYO.
JOHN P. EAST, N.C.
CHARLES E. GRASSLEY, IOWA
JEREMIAH DENTON, ALA.
ARLEN SPECTER, PA.

JOSEPH R. BIDEN, JR., DEL.
EDWARD M. KENNEDY, MASS.
ROBERT C. BYRD, W. VA.
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZ.
PATRICK J. LEAHY, VT.
MAX BAUCUS, MONT.
HOWELL HEFLIN, ALA.

VINTON DEVANE LIDE, CHIEF COUNSEL AND STAFF DIRECTOR
DEBORAH K. OWEN, GENERAL COUNSEL
SHIRLEY J. FANNING, CHIEF CLERK
MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE
AND PROCEDURE

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

PAUL LAXALT, NEV.
ARLEN SPECTER, PA.

HOWELL HEFLIN, ALA.
MAX BAUCUS, MONT.

LYNDA L. NERSESIAN, CHIEF COUNSEL AND STAFF DIRECTOR
ALICE R. MILDER, GENERAL COUNSEL

April 10, 1984

Mr. Donald L. Dotson
Chairman
National Labor Relations Board
1717 Pennsylvania Ave.,N.W.
Room 630
Washington, D.C. 20570

RE: Sanctions for violence, threats of violence, and property damage by union members against employers and non-striking employees.

Dear Chairman Dotson:

The Senate Judiciary Committee held a hearing on October 25, 1983 and will hold further hearings at the end of this month on union violence and the Hobbs Act.

(1) What penalties are currently available when union members or their leaders engage in, foster, or encourage acts of violence, property damage, or threats of same, against an employer or non-striking workers?

(2) How often are these penalties/remedies actually used?

Please describe the facts of a sample of such cases in which sanctions have been imposed.

I would appreciate a response to these questions prior to April 25, 1984.

Sincerely,

Chuck Grassley
Charles E. Grassley
United States Senator

CEG:tcm

NATIONAL LABOR RELATIONS BOARD
Washington, D.C. 20570

24 April 1984

Honorable Charles E. Grassley
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Grassley:

This is written to respond to your letter of 10 April 1984. The letter requests information concerning the kinds of sanctions available where violence occurs during labor disputes, as well as the frequency with which those sanctions are employed. Our review of the area shows that specific information is available concerning the kinds of sanctions available, but that only limited records are maintained concerning the frequency of their use.

There are a number of situations involved in what we generally label "violence" cases. They can be classified, though, by four general factors: (1) the status of the person committing the offense; (2) the gravity of the offense; (3) the status of the person against whom the offense is directed; and (4) the type of relief sought.

(1)

(Perpetrator's Status)

In cases where violence occurs, the perpetrators are not always employees of the employer being struck. For example, the perpetrator may be a union official or business agent from another work location. At other times the offender may be a "stranger" to the entire situation, perhaps a member of another union.

More typically, the perpetrator may be a member of the same union at a shared work location.

(2)

(Gravity of the Offense)

The seriousness and repetition of the offense also determine the sanctions available. The two factors play a part in the evaluation, but just how they weigh in cannot always be determined. In general, however, the more serious or repeated the offense, the more likely that sanctions would be imposed.

(3)

(The Status of the Person Against Whom Violence is Directed)

The "victim" of violence in a labor context is generally either co-employees who refrain from participation in the strike or the employer. However, "victims" can also be family members of non-participating co-employees or the employees of others who attempt to conduct business at the struck location.

(4)

(Types of Relief)

Four kinds of relief can be sought: (A) criminal sanction, in an action brought through local prosecuting authority; (B) civil damages, either through state court tort actions, or so-called "303 suits", in Federal Court, under §303 of the Labor-Management Relations Act, 1947, 29 U.S.C. §187; (C) injunctions, through state court actions, or in Federal Court in action by the National Labor Relations Board's use of its authority under §10(j), 29 U.S.C. §160(j); and (D) an unfair labor practice charge, under §8(b)(1)(A), brought against a labor organization or its agents.

Also, in instances where the perpetrator is an employee of the struck employer, that employer can assess the actions of violence or misconduct in determining whether the employee should be reinstated to employment at the strike's conclusion. That judgment would be reviewable by the NLRB in an action brought by the employee or union contesting the employer's decision under §8(a)(1), 29 U.S.C. §158(a)(1). It may also be reviewed by the union and employer as part of a settlement of the issues which led to the strike.

I should mention that injunctive relief is not generally available to private parties in federal court for this type of case. The Norris-LaGuardia Act, 29 U.S.C. §101, et. seq. removes from the District Courts jurisdiction to grant temporary or permanent injunctions in labor disputes. (Section 10(j), mentioned above, is seen as a Congressionally approved exception to this policy in instances where the NLRB, and not a private party, seeks the injunction.)

It should also be noted that the Board does not award "backpay" to employees who are out of work due to violence or misconduct. Employers who bring charges in such cases must also bring a civil suit to recover lost pay. Relief under §8(b)(1)(A) is limited in this respect by Board policy.

Based upon our inquiry to knowledgeable people within the National Labor Relations Board, we believe information concerning the use of these remedies is sparse. We are unable to determine, for example, the frequency of state civil or criminal cases, or how often §303 is employed. Here at the Board, the 8(b)(1)(A) charges are not broken down by category, so we are unable to furnish the number of those which address violence issues.

The Board's use of 10(j) where violence was the primary basis for seeking such relief, compared to all 10(j) cases for the period shows: 2 of 15 cases from October 1, 1983 to February 7, 1984; 2 of 71 cases from October 1, 1982 through September 30, 1983; and 5 of 58 from October 1, 1981 through September 30, 1982.

This appears to be the best information available here. We are unable to say whether the Justice Department or the Administrative Office of the Courts would have additional data. From what we have determined, however, there seems to be little hard information about this subject.

We trust that this response is of value to your Committee's effort. We would be pleased to be of further assistance, should you have additional questions.

Sincerely,

Donald L Dotson

Donald L. Dotson
Chairman

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE ADMINISTRATIVE PRACTICE AND PROCEDURE SUBCOMMITTEE
SENATE JUDICIARY COMMITTEE
REGARDING S. 462 - AMENDMENTS TO THE HOBBS ACT

April 30, 1984

The American Farm Bureau Federation is the nation's largest general farm organization with a current voluntary membership in excess of 3.3 million families in 48 states and Puerto Rico. This includes at least 85 percent of the 750,000 agricultural employers in this country.

Farm Bureau recognizes and supports the right of workers to voluntarily form unions for the purpose of collective bargaining and to protect the interests of their members. However, we do not believe that any union or any other group of individuals in this country should enjoy an exemption from any federal statute that prohibits the use of extortion or threats of extortion to achieve its goals. We believe the Supreme Court seriously erred in the Enmons Case, in which it ruled that the Congress did not intend to include labor unions under the jurisdiction of the Hobbs Act.

While S. 462 does not fully address the widespread problem of violence and threats of violence being used by some labor unions to coerce employers and non-union employees in this country, it does at least apply the same basic standard to acts of extortion by labor unions that others must observe.

At the same time, and properly so, the bill makes it clear that the amended act would not be administered in such a way as to interfere with the normal, peaceful, and legal activities of unions, or even minor acts of violence that are apt to occur during a heated labor dispute.

It is time for the Congress to make the language of the Hobbs Act so clear that even the members of the Supreme Court will be able to understand that Congress intends to include labor unions under the jurisdiction of that Act.

The argument that the problems of labor violence should be left to local and state law enforcement would make sense only if the Act is repealed. There is no justification for placing federal jurisdiction over all acts or threats of extortion committed by anyone except members of a labor union.

Farm Bureau takes a back seat to no one as an advocate of decentralizing the power of government in this country and placing more responsibility at the state and local level. However, we know from long years of experience that if we place total dependence upon state and local law enforcement to deal with violence in labor disputes, in too many cases the job will not get done. We have all witnessed too many situations in which state and local law enforcement officials are reluctant to get involved in labor disputes because of local political pressures, or in some cases, because the enforcement officers themselves are members of a labor union.

This bill does not provide for federal preemption in dealing with extortion. State and local laws would still apply, and state and local law enforcement officials could still carry out their responsibilities under state and local statutes. This bill will untie the hands of federal law enforcement officials to assist or to act on their on volition where state and local law enforcement is not effective.

It is true that only a small percentage of Farm Bureau members are directly involved in dealing with labor unions, but the experience of some of our members in California and other states has clearly demonstrated that some union leaders, while professing a policy of nonviolence, make widespread use of violence, threats of violence and other extortionate actions in attempting to force employers to accede to their demands.

But over and above our interest in what has been taking place in union activities on farms, our 3.3 million plus member families are citizens and taxpayers who have a legitimate concern about violence in our society from whatever source. The use of violence or threat of violence must not be condoned and is a matter of national interest that should be addressed forthwith by the Congress.

We commend the sponsors of S. 462 for the introduction of this legislation and ask that this Committee, the Senate and the Congress as a whole act now to close the union loophole in the Hobbs Act that was created by the Court.

We will appreciate your careful consideration of our views.

NAM
National Association
of Manufacturers
Industrial Relations Department

May 17, 1984

The Honorable Charles E. Grassley
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

The NAM appreciates the opportunity to participate in the Judiciary Committee hearings on S.462, an amendment to the Hobbs Act, and would like to submit the following statement for the record.

NAM is a voluntary business association of over 13,500 corporations, large and small, located in every state. Members range in size from the very large to over 9,000 small manufacturing firms, each with an employee base of less than 500. NAM member companies employ 85% of all workers in manufacturing and produce over 80% of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its Association Council and the National Industrial Council. NAM members negotiate the vast majority of major collective bargaining agreements reached between American manufacturers and American manufacture workers.

Reform of the Hobbs Act has been a long-term goal of ours and the NAM strongly supports your efforts to provide a level of protection for employers from labor violence. We believe that the extension of federal jurisdiction to cover labor violence is essential, given the apparent inability and/or unwillingness of state/local jurisdictions to address this problem.

Under present law, the Federal Government, represented by the FBI, is precluded from investigating serious acts of violence and extortion by corrupt union officials because of the 1973 Supreme Court ruling in U.S. v Enmons, 410 U.S. 396 (1973), that exempts unions engaged in "legitimate union activity" from prosecution under the Hobbs Act of 1946.

Traditionally, indications have been that Congress has not considered union strike violence to be a major factor in strike resolution, but has perceived it only as an incidental evil associated with collective bargaining. Congress has, therefore, delegated the policing of such activities to state and local authorities.

NAM contends that union strike violence can have a major impact on strike resolution negotiations and believes it is consistent with the Federal Government's existing labor relations authority to clearly state that such activities fall within Federal jurisdiction. Premeditated strike violence against the employer becomes a factor in contract resolution since it raises the employer's cost of disagreeing with a union's demands, adds other costs through lost production by the strike itself, and can result in serious property damage and in injuries to the employer, his non-striking workers, and others. An employer who is faced with mounting strike violence must begin to calculate the cost of expected future disturbances. Such violence can raise the employer's cost of disagreeing with the union's demands above his cost of agreeing. The employer thus finds himself making concessions that he would not ordinarily make. It is clear that strike violence can and does enhance the union's bargaining strength and often leads to more employer bargaining concessions than would otherwise be the case.

There are three general categories of union strike violence. First, whenever a union organizes a picket line during a strike, acts of violence and property damage may occur. However, these actions are usually minor and have little impact on the outcome of the negotiations. Second, as strikes progress, union members can become hostile towards the employer and vengeful acts of violence can occur. These actions can be costly and more dangerous. The third and most serious type of union strike violence involves a coordinated campaign against an employer. This type of activity has the intent of forcing the employer to accede to the union's collective bargaining demands. This type of union violence can best be likened to extortion.

We recognize the position of unions that union members have a legitimate right to conduct peaceful strikes and normal picket line activity. Associated and spontaneous incidental strike activity and violence would not be restricted by this legislation. However, incidents of willful union strike violence which involve serious bodily injury or damage should be covered by Federal legislation for two reasons. Although the states have laws against such activity, state and local law enforcement agencies are often unable or unwilling to get involved in cases associated with union violence. The May 1, 1984 testimony of Sigmund Kaye before your committee demonstrates the real hesitation of local authorities to become involved in prosecuting instances of union strike violence and indicates how placing these crimes under Federal jurisdiction would provide employers with more effective legal recourse.

Mr. Kaye, a member of a partnership that was renovating a building in Philadelphia testified that he suffered paralysis and underwent surgery as a result of a beating last summer by men who arrived on the job site in a bus that police have traced to the local Carpenters Union. Some of the men who were destroying the property were wearing T-shirts which stated "Union Capenters Hit Harder". The Philadelphia Police Department interviewed the driver of the bus who denied that the bus was in the vicinity of the property on the day of the beating. This concluded the Department's investigation.

In February of this year, the House Republican Study Committee chaired by Rep. Phil Crane of Illinois, held a hearing on union-inspired violence, receiving testimony from four victims of union violence, including Mr. Kaye. Rep. Crane opened the hearing with an announcement that three other scheduled witnesses had backed out because they feared union retaliation. One of the witnesses, Horace Guyton, a janitor for Wheaton Industries, Millville, N.J., testified that he chose not to participate in a strike last May by Local 219 of the Glass, Pottery, Plastics, and Allied Workers "because of my family's financial needs and the fact that the employees were not granted the right to vote on whether to strike or not". Because he crossed the picket line, harassment included surveillance of his house, threats, assault with a brick, and having his name placed on a union "scab list." Although the strike has been settled, he is still the target of racial epithets and has been ostracized by fellow employees.

Although legal action is pending in some of the cases, the witnesses at the hearing complained that local law enforcement authorities were either unable or unwilling to pursue their cases rigorously.

Secondly, vengeful acts of union strike violence can influence employers' bargaining behavior, and has the effect of extorting the employer into surrendering to the union's demands. This creates a financial impact on the final contract settlement. Willful acts of vengeful strike violence can amount to de facto extortion and should be dealt with by the central Federal anti-extortion law, namely the Hobbs Act.

There has been a great deal of discussion about the Supreme Court's interpretation of "extortion" in *Enmons.* In that case, the Court was asked to rule on whether striking union members, who engaged in strike violence with the expressed purpose of forcing their employer into acceding to the union's otherwise legitimate bargaining demands, had committed extortion. The Court ruled that since the union members involved in the *Enmons* case had used violent means to achieve a legitimate end, the use of violence was not "wrongful". Here, the Court assumed that the outcome of collective bargaining negotiations would not be influenced by extortinate union behavior during strikes. However, indications are that this such behavior has a direct effect on the employer's ability to disagree with union demands. Strike violence can and often does force an employer to make larger contract concessions than he would have made in a peaceful strike situation. There is a danger in continuing to allow unions to engage in strike violence with the intention of winning otherwise unobtainable collective bargaining concessions.

The NAM firmly believes that reform legislation is needed to eliminate organized labor's special exemption from Federal prosecution for acts of violence and extortion under the Hobbs Act. Violence is evil and should be treated as such, no matter what end its utilization is meant to achieve. Removing the current exemption from labor law coverage that such violence now enjoys is a matter of great importance. If labor violence were made a Federal offense, this type of behavior could be curtailed. This is a loophole which labor has used to its advantage and one that should be closed so that justice can prevail in strike situations.

Thank you for allowing us to comment on the necessity for enacting this legislation.

Sincerely,

Renee L. Reymond

Renée L. Reymond
Associate Director
Labor Relations

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS · WAREHOUSEMEN & HELPERS
OF AMERICA
25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

OFFICE OF
• ROBERT M. BAPTISTE •
LABOR COUNSEL

May 18, 1984

The Honorable Charles E. Grassley
United States Senate
Committee on the Judiciary
229 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Grassley:

On April 30 and May 1, 1984, the United States Senate Committee on the Judiciary held hearings on S. 462, a bill to amend the Hobbs Act. In response to these proceedings, the International Brotherhood of Teamsters is respectfully submitting its statement of position on S. 462, and respectfully requests that it be made part of the record of these proceedings. I have enclosed the original and five copies of the statement.

We appreciate the Committee's consideration of our statement of position.

Sincerely yours,

Robert M. Baptiste
Labor Counsel

RMB:lc

Enclosures

STATEMENT
OF
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

We are pleased to have this opportunity to offer the comments of the International Brotherhood of Teamsters on S. 462, a bill to amend the federal extortion statute, commonly referred to as the Hobbs Act. The International Brotherhood of Teamsters is a labor organization representing approximately two million working men and women and is deeply concerned with legislation that has an impact on the right to engage in collective bargaining and concerted activities in support of that right.

S. 462 is designed to overrule the United States Supreme Court's decision in United States v. Enmons, 410 U.S. 396 (1973). This proposed legislation would clearly weaken the effectiveness of the American trade union movement. Moreover, the bill presents a severe threat to the stability of this nation's established collective bargaining system, the foundation of the national labor policy.

S. 462 seeks to turn the clock back to the days before the National Labor Relations Act and the subsequent development of our carefully balanced national labor policy.

This proposed legislation will severely harm the workers' right to engage in protected concerted activity for a legitimate labor objective. As a result, the effectiveness of unionism will be diminished. Surely, workers will be extremely hesitant to join a picket line knowing that any remark they make, or act they commit, however provoked or thoughtless, could subject them to the severe penalties of the federal extortion law. Moreover, S. 462 is an unsubstantiated insult to the working men and women of this country who honor and obey the laws of this land. It is extremely painful for us to watch this legislation being considered as a result of the massive anti-union propaganda that has been manufactured by professional million dollar union-busting organizations. 1/ It must be pointed out that "most major business organizations have not joined the effort to [amend the Hobbs Act]. An official at one large business group conceded privately that picket line violence

---

1/ In the last ten years, there has been a well documented and dramatic increase in management's use of sophisticated labor relations consultants to counter the unionization efforts of employees. This issue, along with the U.S. Department of Labor's failure to enforce the registration requirements of the Labor-Management Reporting and Disclosure Act of 1959 against such consultants, has been the subject of recent Congressional hearings. The Subcommittee on Labor-Management Relations, Committee on Education and Labor, United States House of Representatives, held such hearings on February 7-8, 1984, and on December 4 and 6, 1979.

is not a high priority item or major problem for many companies." [2]

We wish to make clear that neither this Union, nor its officers, or members, by opposing this legislation, seek to condone, justify, or endorse the use of violence by any party to a labor dispute. Our opposition to unnecessary federal encroachment in this area, traditionally reserved to the states, should not be so interpreted.

S. 462 would greatly expand the federal government's role in an area of traditional state concern and chill the exercise of federal rights of employees under the National Labor Relations Act. Accordingly, the proponents of S. 462 have the burden of proving that the bill is justified by a compelling federal interest. The supporters of S. 462 have failed to satisfy their burden for the following reasons:

A. S. 462 will severely threaten the effectiveness of the established collective bargaining system and the national labor policy;

B. The existing federal and state legislation thoroughly addresses the labor violence issue;

C. The proposed legislation is discriminatory in its treatment of labor unions and employers;

---

[2] Wall Street Journal, December 11, 1981, p. 12.

D. There is no evidence that the problem of labor union violence is a pervasive national problem.

E. The specific language of S. 462 is vague and does not provide for sound and consistent statutory construction.

A.

S. 462 WILL SEVERELY THREATEN THE EFFECTIVENESS OF THE ESTABLISHED COLLECTIVE BARGAINING SYSTEM AND THE NATIONAL LABOR POLICY

Congress recognized almost fifty years ago that institutionalizing industrial conflict and defusing it through mandatory collective bargaining between employer and worker representatives was the best way to reduce industrial strife and the consequent disruption that occurred. In balancing the public interest in the peaceful settlement of industrial disputes with the freedom of labor and management to work out their problems in light of their needs and experience, the law did not outlaw the exercise of economic force. [3]

The right to strike is clearly protected by our federal labor statutes. Collective bargaining, the keystone of the national labor policy, presupposes that organized labor has the right to engage in concerted economic action for legitimate objectives.[4] In NLRB v. Insurance Agents, 361 U.S. 477, 489 (1960), the United States Supreme Court explained that "the presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized. The collective bargaining process functions as an effective means of establishing terms and conditions of employment because the risk of loss to labor and management is so great that realistic compromise is cheaper than economic strife.[5]

---

[3] Violence In America 230 (D. Graham & T.R. Gurr rev. ed. 1979).

The established collective bargaining system has worked effectively for nearly fifty years, with a minimum of violence. Notwithstanding the success and durability of our present system, the sponsors of S. 462 seek to turn the clock back to the early 1800's and thereby revive the conspiratorial view of combinations of workers engaged in collective actions against employers. [6] Worker participation in strikes under S. 462 would become the subject of review by federal criminal law enforcement agents. As in the early labor cases in this country:

---

[4] The Developing Labor Law 995 (C.J. Morris 2d ed. 1983).

[5] Id. at 996.

[6] Commonwealth v. Pullis, Mayors Court of Philadelphia (1806) (Philadelphia Cordwainers' Case).

> The stress of the prosecution [will be] upon the coercion incident to the activities and objects of the association ... without distinction between whether they were effected by acts when recognized as unlawful (beating of strike-breakers) or by acts which were not (refusal of association).[7]

In other words, the acts and statements of workers, whether or not they are related to violent activities, become evidence in criminal investigations.

Through S. 462, the Right To Work Committee (RTWC) attempts to secure their true singular goal of destroying unions. Thus, S. 462 is the vehicle used by the RTWC to align the government with management in a labor dispute. This rewrite of the law of extortion inevitably invites a return to the days when combinations of workers to raise wages were viewed as an unlawful conspiracy. Thus, the passage of S. 462 will create instability in labor-management relations and substantially weaken the effectiveness of the established collective bargaining system.

B.

THE EXISTING FEDERAL AND STATE LEGISLATION SUFFICIENTLY ADDRESSES THE LABOR VIOLENCE ISSUE

S. 462 would confer federal jurisdiction over every case of assault or property destruction which is associated, in any way, with otherwise protected strike activity. This expansion of federal criminal jurisdiction is unnecessary because there presently exists a substantial body of federal law to deal with labor violence.

---

[7] Nelles, The First American Labor Case, 41 Yale L.J. 165 (1931) (emphasis added).

1. Hobbs Act

The Hobbs Act forbids interference with commerce by extortion. The Act defines extortion to mean the obtaining of property from another, with his consent, induced by the wrongful use of actual or threatened force, violence or fear . . ." 18 U.S.C. § 1951(b)(2). The Act clearly applies to the employer-employee relationship. United States v. Green, 350 U.S. 415 (1955).

In United States v. Enmons, the United States Supreme Court held that the Hobbs Act does not reach the use of violence as extortionate conduct, which is clearly punishable under state law, to achieve legitimate union objectives. The Court based its holding on its interpretation of the word "wrongful," used in the Act's definition of extortion. 18 U.S.C. 1951(b)(2). The Court stated:

> "'wrongful' has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property." 410 U.S. at 400.

In light of the Court's holding, the Hobbs Act will not cover a union's use of violence to achieve higher wages in return for genuine services which an employer seeks. In this situation, there has been no wrongful taking of the employer's property because he has paid for the services he bargained for and the workers receive the wages to which they are entitled as compensation for their services. 410 U.S. at 400.

In Enmons, the Court recognized Congress' specific intent to exclude, from the coverage of the Hobbs Act, strike violence to achieve a legitimate union objective. The Court cited Congressman Hobbs' explanation of the intent of the Act:

> "Mr. MARCANTONIO. All right. In connection with a strike, if an incident occurs which involves--
>
> "Mr. HOBBS. The gentleman need go no further. This bill does not cover strikes or any question relating to strikes.
>
> "Mr. MARCANTONIO. Will the gentleman put a provision in the bill stating so?
>
> "Mr. HOBBS. We do not have to, because a strike is perfectly lawful and has been so described by the Supreme Court and by the statutes we have passed. This bill takes off from the springboard that the act must be unlawful to come within the purview of this bill.
>
> "Mr. MARCANTONIO. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct?
>
> "Mr. HOBBS. Certainly.
>
> "Mr. MARCANTONIO. That then could become an extortion under the gentleman's bill, and that striker as well as his union officials could be charged with violation of sections in this bill.

> "Mr. HOBBS. I disagree with that and deny it in toto."[8]

Enmons clearly does not foreclose prosecution, under the Hobbs Act, of all extortionate acts simply because they occur in the labor dispute context. The United States Supreme Court and various United States Courts of Appeals have held that the Act prohibits union officials from threatening force or violence against an employer in order to obtain personal payoffs, as well as prohibiting unions from engaging in extortionate conduct to exact wage payments from employers in return for imposed and superfluous services of workers.[9]

2. *Federal Criminal Statutes*

The *Enmons* holding does not prohibit the federal government from using several federal criminal statutes, other than the Hobbs Act, to punish labor violence. *United*

---

[8] 89 Cong. Rec. 3213, *cited in*, *U.S. v. Enmons*, 410 U.S. at 405-406.

[9] See e.g., *United States v. Enmons*, 410 U.S. 396, 400 (1973); *United States v. Russo*, 708 F.2d 209 (6th Cir. 1983), *cert. denied*, 79 L. Ed. 2d 179 (1984); *United States v. Wilford*, 710 F.2d 439 (8th Cir. 1983), *cert. denied*, 79 L. Ed. 2d 166 (1984); *United States v. Billups*, 692 F.2d 320 (4th Cir. 1982), *cert. denied*, 78 L. Ed. 2d 93 (1983); *United States v. Iozzi*, 420 F.2d 512 (4th Cir. 1970), *cert. denied*, 402 U.S. 943 (1971); *United States v. Kramer*, 355 F.2d 891 (7th Cir.), *cert. granted in part and denied in part*, 384 U.S. 100 (1966); *Bianchi v. United States*, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955).

States v. Thordarson, 646 F.2d 1323, 1327 (9th Cir.), cert. denied, 454 U.S. 1055 (1981). The federal government has applied the Travel Act,[10] 18 U.S.C. § 1952, the Explosives Act,[11] 18 U.S.C. § 844, the firearm provisions of the Internal Revenue Code,[12] 26 U.S.C. § 5861, and the Racketeer Influenced and Corrupt Organizations Act (RICO),[13] 18 U.S.C. § 1961, to conduct of labor officials and union members.

3. National Labor Relations Board Remedies To Address Labor Union Violence

The National Labor Relations Board has the power to institute unfair labor practice proceedings against a union or its agents for strike-related misconduct. In Section 8(b)(1)(A) of the Labor Management Relation Act (LMRA), Congress gave the NLRB the authority "to proceed against union tactics involving violence, intimidation and reprisal or threats thereof." NLRB v. Drivers Local Union, 362 U.S. 274, 290 (1960). Congress' purpose in drafting this provision was "to fix the rules of the game, to insure that strikes and other organizational activities of employees were conducted peaceably by persuasion and propaganda and not by physical force, or threats of force or economic reprisal." 14/

---

[10] See, e.g., United States v. Thordarson, 646 F.2d 1323 (9th Cir.), cert. denied, 454 U.S. 1055 (1981), United States v. Billups, 692 F.2d 320 (4th Cir. 1982), cert. denied, 78 L. Ed. 2d 93 (1983).

[11] See, e.g., United States v. Thordarson, 646 F. 2d 1323 (9th Cir.), cert. denied, 454 U.S. 1055 (1981); United States v. Parker, 586 F.2d 422 (5th Cir. 1978), cert. denied, 441 U.S. 962 (1979); United States v. Love, 482 F.2d 213 (5th Cir.), cert. denied, 414 U.S. 1026, United States v. Chambers, 515 F. Supp. 1 (N.D. Ohio 1981).

[12] See, e.g., United States v. Love, 482 F.2d 213 (5th Cir.), cert. denied, 414 U.S. 1026 (1973), Langel v. United States, 451 F.2d 957 (8th Cir. 1971).

[13] See, e.g., United States v. Thordarson, 646 F.2d 1323 (9th Cir.) cert. denied, 454 U.S. 1055 (1981); United States v. Scotto, 641 F.2d 47, 50-51 (2d Cir. 1980), cert. denied, 452 U.S. 961 (1981); United States v. Provenzano, 620 F.2d 985, 989 (3d Cir.), cert. denied,
(Footnote Continued)

Violence or threats of violence against an employee may constitute an unfair labor practice. Moreover, violent conduct directed at an employer, or its agents, has been found to be an unfair labor practice when the violence was committed in the employees' presence 15/ or when it is substantially certain that the employees will hear about it. 16/

(Footnote Continued)
449 U.S. 899 (1980); United States v. Kaye, 556 F.2d 855, 859 (5th Cir.), cert. denied, 434 U.S. 921 (1977).

14/ Perry Norvell Co., 80 N.L.R.B. 225, 239 (1948).

15/ Retail Store Union (I. Posner, Inc.), 133 N.L.R.B. 1555 (1961).

16/ NLRB v. Local 140, United Furniture Workers of America, 233 F.2d 539 (1956).

The NLRB has the authority to issue cease and desist orders which are enforceable in the United States Courts of Appeals. In addition, the Board may seek civil and criminal penalties for repeated violations. Moreover, if the union engages in serious misconduct, the Board is empowered to deny the union its statutorily protected bargaining rights. [17] Finally, the Board has the power under § 10(j) of the LMRA to secure injunctive relief against union violence from the federal district court.

The NLRB has been very effective in reducing the level of labor violence in this nation. In an extensive study of American labor violence, the author concluded that "[t]he sharp decline in the level of industrial violence since the 1930's] is one of the great achievements of the National Labor Relations Board." [18]

4. State Criminal And Civil Laws

Every single wrong that would be made a federal crime by S. 462 is presently a crime under state or local laws.

---

[17] Even though the Union has won an NLRB-conducted election to represent the employer's employees, the NLRB will revoke the certification if the union engages in serious acts of misconduct. Union Nacional de Trabajadores (Carborundum Co.), 219 N.L.R.B. 862 (1975), enf'd sub nom, NLRB v. Union Nacional de Trabajadores, 540 F.2d 1 (1st Cir. 1976).

[18] Violence In America 235 (H.D. Graham and T.R. Gurr, Rev. ed. 1979).

Accordingly, any expansion of the federal government's jurisdiction under the Hobbs Act will not close any enforcement gaps left open by either state or local laws.

The federal labor law preemption doctrine permits the states, under their criminal laws, to punish and enjoin conduct that constitutes an unfair labor practice. [19] The states may prosecute such activity through their traditional criminal laws regarding extortion, assault, battery, arson, and destruction of property. Moreover, the states are free to exercise their traditional police powers to enact legislation to serve their specific purposes. In UAW v. Wisconsin Employment Relations Board, the Supreme Court recognized the states' traditional role in this area. The Court stated:

> [T]he States [have the] power to prevent mass picketing, violence, and overt threats of violence. The dominant interest of the State in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern. Nor should the fact that a union commits a federal unfair labor practice while engaging in violent conduct prevent States from taking steps to stop the violence [(citations omitted) 351 U.S. at 274].

The Court has permitted and recognized the states' traditional regulation of this activity because the "compelling state interest, in the scheme of our federalism, is the maintenance of domestic peace." [20/]

---

[19] UAW v. Wisconsin Employment Relations Board, 351 U.S. 266 (1956).

In addition to the states' traditional police powers, the state courts have the power to award compensatory and punitive damages in common-law tort actions involving intimidation or violence. [21/]

In light of this ample body of state law and the present budgetary crisis faced by federal agencies, who are already at "wits end" trying to meet existing responsibilities, the proper role for the Federal Government in local level criminal law enforcement should be a limited one.

This type of approach clearly falls within the Administration's new federalism doctrine. A key spokesman for the Administration has noted:

> "*** [W]e would hope to clearly define the role of the federal government, a role which has been somewhat diffused over the past ten years, as to its responsibility for the crime problem. The federal government to be sure has a role, but that role is a limited one. The principal responsibility for the control of crime, particularly the

---

[20/] San Diego Building Trade Council v. Garmon, 359 U.S. 236, 247 (1959).

[21/] United Automobile Workers v. Russell, 356 U.S. 634 (1958); UMW Dist. 50 Constr. Workers v. Laburnum Constr. Co., 347 U.S. 656 (1954). See, e.g., Altenose Constr. Co. v. Building Construction Trade Council of Philadelphia, 81 L.R.R.M. 2562 (Pa. Sup. Ct. 1972), cert. denied, 411 U.S. 932 (1973); United Aircraft Corp. v. Machinists, 77 L.R.R.M. 2436 (1971), cert. denied, 404 U.S. 1016 (1972).

> kind of crime that affects most citizens - the robberies, the burglaries, the murders - are the responsibility of state and local governments."[22]

There is no evidence that state and local law enforcement authorities are unable or unwilling to address the issue of union violence. In fact, the evidence establishes that state and local officials are not reluctant to investigate and prosecute such matters. A United States Department of Justice official has testified that the "states and localities have been handling these matters effectively" and that the Department has not found a reluctance on the part of state and local officials to investigate and prosecute such instances of violence.[23] Moreover, William J. Guste, Jr., Attorney General of the State of Louisiana, has expressed strong opposition to expanding the federal government's jurisdiction under the Hobbs Act. Mr. Guste stated that the state law and local law enforcement agencies are fully adequate to deal with this issue. [24] Finally, the allegations that state and local political pressure prevents state and local law enforcement agencies from pursuing strike violence is pure speculation. In the cases where labor violence has not been investigated or prosecuted, there is no evidence that the law enforcement official's conduct was influenced by political pressure from organized labor. In addition, this allegation is based on the speculative premise that labor unions have greater influence on the political process than other institutions in society, and that every union in every location in the national would exert such influence improperly. Moreover, it is an insult to the integrity of the state and local officials assigned the responsibility of investigating and prosecuting these actions.

---

[22] Edwin Meese, Counselor to President Reagan, Remarks Before American Bar Association, New Orleans, Louisiana, August 11, 1981.

[23] Testimony of Jonathan C. Rose, Assistant Attorney General, Department of Justice, on S. 613, Before the U.S. Senate Subcommittee On Criminal Justice, December 10, 1981, cited in, Amending The Hobbs Act: Unnecessary, Unwise and Unfair, p. 8, AFL-CIO Position Paper, May 1, 1984.

C.

THE PROPOSED LEGISLATION IS DISCRIMINATORY IN ITS TREATMENT OF LABOR UNIONS AND EMPLOYERS

S. 462 is unequitable because it clearly places the prosecutorial powers of the federal government on the side of management in labor disputes. While the bill appears to cover both union and employer activity, by stating that conduct, "in the course of a legitimate business or labor dispute or in pursuit of a legitimate business or labor objective" is covered, it realistically only applies to labor officials and union members.

---

[24] Information Regarding Allegations Made By The Right To Work Committee And Others In Fund-Raising Materials Or Previous Testimony On S. 462, Appendix F, AFL-CIO Position Paper, May 1, 1984.

First, the bill would operate to convert legitimate labor activity into extortionate conduct. Legitimate economic strikes are not extortionate. Accordingly, a perversion of the traditional extortion concept is required to make it applicable. S. 462 achieves this perversion by permitting a finding of extortion where the union's conduct consisted of a strike, on the basis that the union's activity is an attempt to take the employer's property, even though the activity was in pursuit of a legitimate labor objective. While S. 462 would bring the union's violent conduct within the Federal Government's criminal jurisdiction, the employer's conduct is effectively exempted from the proposed legislation. There is no "property" of the workers at stake. Accordingly, under S.462, there would be no federal extortion prosecution for violent conduct or threats of violence by management in its attempt to break a strike or destroy a union organizing campaign. As a result, management employees will be subject only to state criminal penalties, while workers would be subject to the much greater penalties under federal extortion law.

Second, S. 462 will subject workers to dual prosecution, at the federal and state level, for the same act. The proposed legislation will allow workers to be subjected to federal extortion prosecution and then, in addition, be charged and prosecuted under the applicable state criminal statute for the specific act committed without violating the double jeopardy provision of the Constitution. 25/ Thus, the advocates of this legislation are creating a distinction that would result in a gross injustice to American workers, subjecting them to disproportionate federal penalties and state penalties for the same acts, merely because those acts occur during a legitimate labor dispute.

Third, S. 462, by protecting only one class of property, that belonging to employers, precludes uniform application of the laws. A statute such as S. 462, which cannot by its terms be applied to all persons similarly situated, would deny to those persons prosecuted under the statute the uniform application of laws. 26/

25/ U.S. v. Wheeler, 435 U.S. 313 (1978).

26/ Schlesinger v. Ballard, 419 U.S. 498 (1975); United States v. Cleveland, 503 F.2d 1067 (9th Cir. 1974); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

This disparity in treatment is unsupportable by the present state of affairs in labor relations, in which employers have engaged in threats and acts of violence to discourage union organizing efforts or for their own personal gain. In the case of Great Coastal Express v. International Brotherhood of Teamsters, 108 L.R.R.M. 2155 (E.D. Va. 1981), affirmed, 675 F.2d 1249 (4th Cir. 1982), cert. denied, 112 L.R.R.M. 2280 (1983), the employer was awarded a sum of $1,300,000.00 for damages during a labor dispute which had been marked by acts of violence allegedly committed by the members of the International Brotherhood of Teamsters during a labor dispute for legitimate collective bargaining objectives. On a motion to reopen the judgment based upon newly discovered evidence, the District Court found that not only had the employees of Great Coastal Express given false statements to authorities and committed perjury under oath at trial, but that they, under the direction of the management of Great Coastal Express, had actually committed the acts of violence and property destruction that were some of the bases of the suit.

Finally, the efforts to amend the Hobbs Act to place workers in federal prisons for acts that occur during a legitimate labor dispute do not include elimination of the current disparity of treatment between workers and employer agents who commit similar acts. Union members are currently punished more severely than strikebreakers. Union members are subject to a maximum fine of $10,000 or imprisonment for 20 years or both, 18 U.S.C. § 1951, while strikebreakers cannot be fined more than $5,000 and imprisoned for more than two years, or both. 18 U.S.C. § 1231.

D.

THE PROPONENTS OF S. 462 HAVE NOT ESTABLISHED THAT LABOR UNION VIOLENCE IS A PERVASIVE NATIONAL PROBLEM

The statistics maintained by the various agencies of the federal government on the issue of labor-related violence establish that this issue does not constitute a pervasive national problem. In addition, we discussed the question of labor violence and its alleged pervasiveness with representatives of major criminal law enforcement agencies. Similarly, we found no support for federal intervention in labor disputes based on the professional experience of these organizations. Finally, the statistical data submitted by the National Right to Work Committee is lacking in any standard of credibility.

1. There Is No Statistical Evidence To Support S. 462

The Department of Justice, through its Bureau of Justice Statistics, compiles the Source Book on Criminal Justice Statistics. In the most recent edition, for the year 1982, there are no specific statistics maintained on labor-related violence. In addition, sources at the United

States Department of Labor, Bureau of Labor Statistics and the Division of Information of the National Labor Relations Board indicate that no statistics are maintained on incidents involving labor violence.

In view of the apparent lack of statistical verification for any significant problem of acts of violence occurring during collective bargaining, we find ourselves in a position of having to respond to the few incidents alleged by the supporters of S. 462 as being of crisis proportions and requiring the attention of the Congress of the United States.

While the lack of statistics on labor-related violence provides some insight to the reality of the alleged problem, various law enforcement and prosecutorial authorities are another source of evidence as to the exaggerated claims made by advocates of Hobbs Act amendments. Our research concerning the position of key law enforcement agencies on the need for federal intervention in the labor violence area reflects the following:

a. The _National Association of Attorneys General_, in their resolutions on criminal code reform adopted in 1979, not only made no mention of a problem of labor-related violence in legitimate collective bargaining situations, but adopted a resolution in _opposition_ to the _expansion_ of federal criminal jurisdiction for statutes such as the Hobbs Act.

b. Representatives for the National Association of Attorneys General, the International Association of Chiefs of Police, and the National Sheriff's Association represented to us that none of their organizations had adopted any statement describing labor-related violence in legitimate collective bargaining as a problem.

c. The Final Report of the Attorney General's Task Force on Violent Crime, issued August 17, 1981, did not mention labor-related violence or expansion of the Hobbs Act to legitimate collective bargaining situations in its "final recommendations on ways in which the Federal Government can improve its efforts to combat violent crime without limiting its efforts against organized and white collar crime." 27/

The lack of statistical evidence on labor violence and the fact that, to the best of our knowledge, no national law enforcement agency has publicly determined that this issue presents a critical national problem, indicates that the RTWC has gravely distorted this issue by citing a small

---

27/ Letter of transmittal from the Attorney General's Task Force on Violent Crime to the Attorney General, Final Report August 17, 1981 of the Attorney General's Task Force on Violent Crime, page iii.

number of well-publicized incidents of threats or acts of violence as indicative of a nationwide campaign of violence or industrial terrorism. This type of campaign is a disservice to the working people of this country.

2. The Statistical Data Submitted By The National Right To Work Committee Is Lacking In Any Standard of Credibility

The statistical evidence submitted by The Right To Work Committee does not support its claim that labor violence is a pervasive problem. No information has been provided to enable one to decipher the methodology in order to evaluate the accuracy and reliability of the data base, as well as the conclusion drawn from that information. Our review of the statistical evidence, The National Right To Work Foundation Datascan Program data, disclosed the following serious problems:

a. There could easily be a duplication of incidents;

b. The data fails to follow-up on the reported incidents in order to reflect whether, in fact, state and/or local officials arrested, prosecuted, and/or convicted any of the individuals accused of the misconduct;

c. The data fails to follow-up on the reported incidents to reflect whether, in fact, the individuals involved were prosecuted under any federal criminal legislation, other than the Hobbs Act, or punished under the Labor Management Relations Act;

d. There is no indication of whether the union, the employer, or an outside party initiated the alleged incidents of violence;

e. There is no evidence of the amount of property damage alleged, or the seriousness of the alleged personal injuries;

f. The source documents for the raw data are not identified.

We invite the members of the Committee to analyze the so-called "evidence" of the RTWC. It is appalling that the RTWC would introduce such faulty data, lacking in any statistical verification. In order to meaningfully evaluate this "evidence," however, an official of the RTWC must explain the source of the information, the method for collection and retrieval of information, and the instructions given to the computer, as well as a summary of the variables and/or criteria that are included in the computer printout. We respectfully request that we be given an opportunity to participate in such a discussion to determine the basis of this "evidence" and establish the true dimensions of labor violence in the United States.

E.
THE SPECIFIC LANGUAGE OF S. 462 IS VAGUE AND DOES NOT PROVIDE FOR SOUND AND CONSISTENT STATUTORY CONSTRUCTION.

In general, we strongly oppose amending the Hobbs Act. Specifically, we oppose the language of S. 462 for several reasons. As presently drafted, the affirmative defense provisions of S. 462 do not provide for legitimate labor activities. More importantly, S. 462 creates more lawyer's questions than it resolves by virtue of its vague terms.

S. 462 begins with the basic proposition that legitimate labor activities, such as striking for increased wages, can be the subject of extortion prosecution because striking for such wages is a taking of the property of an employer. Therefore, any violent activity that occurs during a legitimate strike will be extortionate. This basic premise of S. 462 will lead to a statutory construction morass. S. 462 creates the following problems:

1. The device of an affirmative defense to limit the application of the Hobbs Act places the burden of establishing the lack of federal jurisdiction on the union member and will chill the exercise of protected rights under the First Amendment and National Labor Relations Act.

An affirmative defense is not raised until after the union member is arrested and indicted. Accordingly, the objective of chilling the exercise of the right to strike will have already been achieved even before the defense can be raised.

2. Subsection (d)(1)'s requirement that the actor's conduct be "incidental to peaceful picketing" introduces a vague nexus requirement

In requiring that the actor's conduct be "incidental" to the labor dispute activity, S. 462 introduces tremendous problems concerning the location, timing, and substantive relationship of the conduct to the legitimate labor activity. Given the vagueness of this language, it is difficult to discern if activities that occur before formal announcement of a strike, removed from the employer's primary premises, or acts that occur during the organizing period of strike activity would be covered by the affirmative defense provision. In short, subsection (d)(1) attempts to introduce an ill-defined nexus requirement to activity that is varied depending on the time and form with which it is used, the employer, the industry, and the otherwise protected activities of the members involved.

3. Subsection (d)(1)'s requirement that the actor's conduct occurred "in the course of a legitimate labor dispute" will necessitate a determination that the underlying labor dispute meets all the requirements of the National Labor Relations Act.

For example, if a Local Union engages in area standards picketing, which is protected by the National Labor Relations Act, and the picketing is later determined to be violative of § 8(b)(7)(C) of the National Labor Relations Act because it had a proscribed recognitional or organizational objective, acts that occurred during that labor dispute could be found to be a violation of the Hobbs Act. The use of the word "legitimate" forces employees to second guess what the NLRB and the courts will later say about their concerted activity. Furthermore, it will enmesh criminal prosecutions in the highly technical area of secondary boycott determinations, which will infringe upon the expertise and jurisdiction of the NLRB. The word "legitimate" could be used as the justification for evaluating the substantive merits of the workers' wage and/or benefit demand. Conceivably, as currently drafted, a high wage demand could be viewed as "illegitimate," thereby precluding invoking of the affirmative defense provision. "Legitimate labor dispute" is not defined in Section 2 of the National Labor Relations Act. The NLRA merely defines what constitutes a "labor dispute," § 29 U.S.C. 152(9).

4. Subsection (d)(2) does not define what "minor bodily injury" is.

The term "minor bodily injury" is not defined. Accordingly, vagueness will permit varied results and lead to abuses.

5. Subsection (d)(3)'s provision that conduct that "was not intended to extort property" is exempt from the coverage of the Hobbs Act, introduces a vague state of mind and/or intent requirement.

Absent a definition of the intent required, a striking worker is not put on notice as to what conduct is proscribed by the Act. Furthermore, it is difficult to understand, as noted previously, how a worker's protesting the wages and/or benefits of an employer and the occurrence of incidental violence could be the basis of a finding that the worker intended to extort the property of the employer.

CONCLUSION

In conclusion, we reiterate our strong opposition to S. 462. This legislation is designed to weaken the effectiveness of the American trade union movement. The bill attempts to expand the federal government's criminal jurisdiction in an area of traditional state concern and therefore chill the exercise of the federal rights of employees under the National Labor Relations Act. S. 462 is not justified by a compelling federal interest. This conclusion is supported by the following: (1) the legislation would threaten the effectiveness of the collective bargaining system and the national labor policy, (2) the legislation is unnecessary because effective federal and state laws presently exist, (3) the bill is discriminatory in its treatment of unions and employers, (4) there is no evidence that labor violence is a serious and pervasive national problem, and finally, (5) the bill is poorly drafted and does not provide for sound and consistent statutory construction. In light of these facts, we urge the full committee to reject S. 462, the true purpose of which is to severely weaken the effectiveness of the trade union movement in this nation.

PART 2.—NEWSPAPER ARTICLES

[Strike-related violence in Oklahoma, directed against Garland Coal Co. and Combustion Engineering Co. as reported in the Tulsa World, the Dallas Morning News, and the Tulsa Tribune.]

[From the Dallas Morning News, Nov. 1, 1981]

MINERS' STRIKE SHATTERS PEACE IN OKLAHOMA TOWN

(By Barbara Johnson)

STIGLER, OKLA.—The hand-carved Western style sign near the city limits tells you that friendly people "make the difference" in Stigler.

It is not a difference made lately, at least not since the coal miners walked off the job. In seven months, their strike has transformed remote, thinly populated Haskell County into a community racked by violence and fear that follow it like a shadow.

Chuck Roye and two other members of United Mine Workers Local 1329 had drawn the day shift for picket duty one day last week.

From 8 a.m. to 4 p.m., they sat behind a bunker of sandbags, in a tar paper shanty on the dusty road leading to the Tamaha mine northeast of Stigler.

"I was sittin' here playing cards one night when they fired four rounds in here," Roye said, explaining the sandbags.

Roye does not bother to explain who "they" are. Neither do the supervisors or workers inside the mine, who have a different version of almost every act of violence since the UMW miners walked off the job last March.

For Roye and 171 other UMW members at four Garland Coal and Mining Co. mines, "they" is understood to mean the company, the workers hired to replace them and the security guards who surround the mines.

For the company, the new hires and the guards, "they" refers to the strikers.

The same day Roye was doing the day shift at the strikers' shanty, Jerry Wells, assistant mine supervisor, reported that a truck carrying coal from the Tamaha mine to a port 11 miles away had been shot at seven times.

The night before, Wells said, "they" had cut power lines into the mine. And the day before, homemade "Russian nails" thrown in the path of coal trucks had flattened 26 tires, not counting the tires on a school bus that traveled the same road.

Gunshots were fired at one of the company's trucks Friday on the way to the river port. One rifle shot hit the truck's cab, but no injuries were reported.

Wells, a miner from West Virginia, was hired by Garland in April. The Oklahoma strike is bad, he said, but not as bad as some strikes he has seen in Kentucky and West Virginia.

"There are a lot of beatings here, a lot of shootings, but not all the shooting is aimed at somebody," he said.

The strike at Garland's Tamaha mine started two weeks before the UMW national contract expired in March. Local 1329 members claimed the company was attempting to break the union by hiring non-union workers to replace laid off workers.

"It was definitely planned (before the national strike) that they wanted us out," said Warren Nixon, another picketing Local 1329 member.

The company maintained the strike was illegal and replaced the strikers.

When the national contract expired March 27, workers at Garland's three other mines—another near Stigler, one at Bokoshe, Okla., and a third at Charleston, Ark.—joined the national strike.

Two months later, when the UMW ratified a national contract and ended the strike, Garland refused to sign the agreement.

Don Lawley, a Garland spokesman in Fort Smith, Ark., said the company no longer is a member of the coal operators association that negotiated a contract with the international union.

Lawley said the contract is unfair to small, financially strapped companies.

Garland has been trying to negotiate its own contract with miners separate from the national contract for almost a year with no success, he said.

Violence has been a part of the strike almost since the first week; it has victimized people with no connection to the company or the union and has intimidated others.

Mary Workman, a secretary-treasurer in the sheriff's department, told about a union member who crossed the picket line early in the strike. He returned to his house to find it riddled with buckshot.

"That put the fear of God in people," Mrs. Workman said.

"If you say something against a coal miner, you're saying something against your neighbor's husband. If you say something against one of the (company's) security guards, you find out your sister-in-law's daughter is dating one of them. Everybody just minds his own business. People won't talk about it," she said.

Mrs. Workman said the sheriff's department—which, other than herself, includes the sheriff and one deputy—has received triple the usual number of calls since the strike. She has recorded as many as 17 calls a day from workers and strikers complaining about harrassment and assaults.

Most of the complaints have to do with property damage. A few have been more serious.

Local 1329 President Don Oldham is scheduled to appear in court this week for a preliminary hearing on a charge of "shooting with intent to kill" in connection with an Aug. 27 incident at the Tamaha mine.

Herman Driscoll, manager of the electric cooperative that services the Tamaha mine, said power lines into the mine have been cut 49 times since May 5. Three times, Driscoll said, lines other than those leading to the mine have been cut, resulting in power outages for two-thirds of Haskell County.

Since Sept. 3, the strikers and company have operated under a court order that forbids strikers, workers and guards from carrying weapons and limits to three the number of strikers allowed to picket at any one site.

The order has helped keep a lid on violence, but it has done little to clear the air of persistent suspicion about what "they" might be up to.

Near the strikers' shanty on the way into the Tamaha mine, strikers have perched an antenna on top of a crude pole tower. Roye said the pickets stay in constant radio contact with other sites where the number of pickets is limited and with another union outpost in the mountains two or three miles away.

"They're there if we need 'em," Roye said, referring to union members at the mountain hideaway.

One Stigler businessman, who refused to state an opinion about the strike, said he is not worried about if and when the strike ever is settled.

"The unfortunate thing is that it's going to make enemies of people here for a long, long time," he said.

[From the Tulsa (OK) World, Sept. 3, 1981]

UMW Boss Accused in Picket Line Shooting

Stigler—The president of the striking United Mine Workers local Wednesday was charged with shooting with intent to kill in connection with an incident last week at a coal mine picket line.

The charge against Donnie Oldham, president of UMW Local 1329 in Stigler, came on the 158th day of the union's tension-filled strike against Garland Coal Co. Mines in southeastern Oklahoma and Arkansas.

Oldham is accused of firing two gunshots through the rear window of a pickup truck occupied by two men who cross the picket line Aug. 26.

The local president reportedly told authorities that actions by the strike breakers had triggered the incident.

He said they earlier drove by his home, two miles east of Stigler, and waved guns in the air.

After they left his house, where no shots were fired, Oldham reportedly told authorities they went to the coal mine where union workers were walking a picket line.

He said the pickup driver, Jerry D. McDaniels, tried to hit him with the vehicle before the shots were fired.

McDaniels was named Wednesday in a breach of peace charge.

It marked the second time this month a union striker has been named in a gun charge.

On Aug. 17, striking miner Larry Crossland, 37, of Panama, pleaded innocent to pointing a weapon at two security guards.

More than 160 UMW members are striking at four Garland coal mines, two near Stigler and one each near Bokoshe and Charleston, Ark.

Law enforcement officers described the situation as "a powder keg."

Until District Attorney Don Robert's office filed the charges this month against the strikers, Garland officials had accused authorities of "being on the side" of strikers.

There have been several shooting incidents reported since the strike started March 27.

In May, a security guard at the Bokoshe mine was wounded in the leg in an unsolved incident.

There have also been unconfirmed reports of shots being fired into homes and at vehicles without injury.

Union members said they have also been the targets of similar attacks.

Oldham, the accused local president, told a reporter in June that his strikers were peaceful.

[From the Tulsa (OK) Tribune, Mar. 11, 1982]

COAL MINE SHUT DOWN, VIOLENCE BLAMED

(By Dale Ingram)

STIGLER—A bitter and violent labor dispute has caused the closing of two Haskell County strip coal mines and threatens to close two others.

A spokesman for Garland Coal Co., owner of the four embattled mines, said the Fort Smith, Ark., firm is "definitely" considering filing lawsuits against people it blames for the problems.

The Garland mine No. 9 east of Stigler will close Friday, said Tulsa attorney L. Paul Mattson.

Workers at the Rose Hill mine south of the city were temporarily laid off about three weeks ago and have been told there is "no likelihood for recall."

The closings put about 80 people out of work in one of the most dramatic turns stemming from a *United Mine Workers'* strike launched one year ago.

Mattson said the closings are a result of continued violence. He said power supplies are frequently disrupted and shootings and bombings have been linked to the dispute.

"It's impossible to maintain safe or profitable operations at these mines," Mattson said.

"Sometimes in the middle of operations the power is cut off and the machinery can't continue. That can kill people," he said.

Don Lawley, labor relations director for Garland, lashed out at the Haskell County Sheriff's Department and Oklahoma Highway Patrol for what he called a "one-sided deal" in trying to curb the violence.

"If they enforced it both ways, it would be a hell of a lot better," Lawley said. "There have been people caught (vandalizing Garland property) and we've had witnesses, but we can't even get them prosecuted."

Mattson added, "There have been several hundred shooting incidents that law enforcement officials have refused to come out and investigate."

The sheriff's department and OHP have denied such claims. After reviewing an Oklahoma State Bureau of Investigation report, Gov. George Nigh said he believed the situation was under control.

Lawley said one example of the sabotage against Garland was the recent leveling of three power lines with a chain saw. The replacement cost $17,000, plus lost production, he said.

Similar incidents have been reported at mines near Bokoshe, where about 40 are employed, and Charleston, Ark., which has about 25 workers.

Mattson said federal agents are investigating the recent bombings of two bridges leading to the Arkansas mine. Two bombs rocked the home of one Garland official in Poteau in February. Striking workers and their replacements have traded shots.

Mattson said weekly reviews of the situations at Bokoshe and Charleston will be made to determine if it remains profitable to operate those mines.

"I wish somebody would ask George Nigh if he still thought it was under control," Mattson said.

Garland and the UMW have blamed the violence on each other.

A spokesman for the UMW said officials had no immediate response to the announcement that the mines would be closed.

"We haven't had a chance to digest it yet," he said.

In March 1981, union workers at the Garland mines went on strike after a contract could not be reached. The National Labor Relations Board upheld the firings of those workers, who were replaced by non-union employees.

Lawley said today "no further negotiations are scheduled."

Mattson said the strike and the ensuing vandalism has cost the company "several million dollars" but no exact figure has been determined.

[From the Tulsa (OK) World, Mar. 2, 1982]

GARLAND COAL CITES VIOLENCE IN PLANS TO CLOSE MINE

(By Martin Zook)

Garland Coal Co. said Wednesday it will close its mine operation at Stigler Friday as a direct result of the violence that has marred a conflict between the company and the United Mine Workers Union of America.

The company, which was operating the Stigler mine with nonunion workers, still has two mines in operation, at Charleston, Ark., and Bokoshe. But one high-ranking Garland official said it is "likely" those operations also will be closed before their leases expire this summer.

Garland blamed the Stigler action on the "constant and unrelenting sabotage to our power sources," L. Paul Mattson, the company's attorney and official spokesman, said.

Union officials could not be reached for comment on Garland's actions or accusations.

A high-ranking Garland official, who asked not to be identified, said, "on a regular basis they are shooting out the regulators with high powered rifles . . . cutting down poles . . . burning poles."

The official estimated Garland's losses at "several million dollars" but refused to put a specific figure on the loss.

Union officials and workers at the Stigler operation were notified of the company's decision during Wednesday negotiations. When asked if the announcement would lead to Garland's withdrawal from Oklahoma and western Arkansas coal operations, a company executive said, "I think it marks the start of that. It's very likely."

While the Garland operations are relatively small, the conflict with the union has drawn national attention. To many in the industry the conflict was a test of the union's ability to force mine operators to use union labor.

Owners said the union's hard stance during salary and benefit negotiations in the past had made it impossible to operate profitably. Union officials have countered that owners violate safety standards without union protection.

Garland also decided Wednesday to permanently close the Rose Hill mine near Stigler. It notified workers there is "no likelihood for recall." The mine was closed temporarily last year.

Whether the Bokoshe and Charleston operations remain open "all depends on whether the violence continues," according to a company statement. The company will regularly review the operations of those mines, Matson said.

One Garland executive said the other two operations will probably be closed before the leases expire because of the expected continued violence. He blamed the closings on the failure of law enforcement officials to apprehend and prosecute the guilty parties. He said there has been "absolutely no law support, none whatsoever."

[Mar. 12, 1982]

FIRM ORDERS HALT IN OPERATIONS AT TROUBLED STATE COAL MINE

(By Bob Drummond)

STIGLER—Poking its head out of a black pit excavated from the hills northeast of here, the dragline at Garland Coal Co.'s No. 9 mine will be quiet after today.

People who live near the mine hope nighttime gunblasts will be silenced as well.

A week from tomorrow will mark the first anniversary of the day when union miners here walked off the job and threw up picket lines around the mine, where non-union workers have since taken over the job of scratching coal from the Haskell County hills.

The yearlong walkout has been punctuated by gunfire and other violence. Local authorities say neither side is blameless.

But citing continued vandalism it says has made the No. 9 mine, at Tamaha, too expensive to run, the Fort Smith, Ark.-based coal company announced this week the mine would close today. The company's other Haskell County mine, near Rose Hill, already has been closed and won't reopen.

"During the last 19 days, we've only been able to operate it four days because the power lines to the mine keep getting cut down," said Don Lawley, Garland's head of labor relations. "And to operate for those four days, it cost $17,000 to put the power poles back up and get the power on again. Somebody's been going at them with chainsaws.

"So, it was just a losing proposition. We don't think we can throw good money after bad, so we're closing it up."

The mine at Rose Hill, one of three other Garland mines where workers joined the strike a week after miners walked out a year ago at No. 9, was closed more than a month ago when the company decided to stop digging at that location and move the dragline to another spot five miles away, Lawley said.

"But it's permanently shut down now, too," he said. "We had intended to move it, but we were hoping Tamaha (profits) would pay for the move."

Because the company decided to close the Tamaha mine, the workers at Rose Hill are out of work, too. Lawley said about 75 workers at the two mines are affected.

Donnie Oldham, president of United Mine Workers Local 1329, which represents workers at the No. 9 mine, disputed Lawley's allegations of vandalism.

"I wish he wouldn't make accusations like that," Oldham said. "They haven't made any charges about anything like that, and they haven't arrested anybody. As far as I'm concerned, it's not true."

The union members were meeting Thursday night to decide the next step, but Oldham said he believes they probably will continue to man the picket lines even after the mine closes.

The walkout at Tamaha last March 20 was sparked by a disagreement over the use of non-union workers while union members were laid off. Workers at the other three Garland mines set up pickets a week later, when a national soft-coal union contract expired.

Garland refused to sign a national agreement that subsequently was negotiated, and a bargaining team from the UMW International Executive Board has been meeting with the company trying to work out a new contract. In the meantime, the company opened all of its mines with nonunion labor.

The last negotiating session was held Wednesday in Fort Smith, but was called off after Garland announced the closings at Tamaha and Rose Hill. No new sessions have been scheduled.

The closings should make a lawsuit filed in Haskell County district court by 96 area residents who asked residents to close the strike-torn Tamaha and Rose Hill mines because of continued violence.

"I didn't like to be aggravated," said Marie Altstatt, one of the parties to the suit. "I live close to the mine, and we had nails in our road and everything. So I'm not particularly sorry that they're closing it down."

Sam Stubblefield, another one of the plaintiffs in the suit, said he hopes the company and the union can work out their differences and put the miners back to work.

"It'll hurt Haskell County, because that's a lot of money out of the county," Stubblefield said. "I'm sorry it's shutting down on account of the boys that lost their jobs out there, and I'm sorry for Garland."

But Stubblefield, who lives on the perimeter of the mine, said he won't be sorry if he never again is awakened by gunfire. Three times during the last year, he said, his family has been frightened by the sound of gunshots.

"Whenever a 11-year-old boy, like my son, is too scared to sleep at night and wants to come get in bed with you, it's bad. I won't be sorry if that's over."

[Violence or threats of violence in Pennsylvania, directed against Wohlsen Construction and its employees, and other unlawful actions directed against nonunion companies and individuals, by union officials, as reported by Lancaster Intelligence Journal, the Philadelphia Inquirer, and the Philadelphia Welcomat.]

[From the Lancaster (PA) Intelligencer Journal, July 15, 1983]

LOCAL BUILDER, INJURED BY PICKETS, HAS BRAIN SURGERY

Prominent Lancaster contractor Robert S. Wohlsen Sr. injured by picketers last month at a Delaware County construction site, underwent brain surgery last week, the firm's attorney said.

Wohlsen, 57, Wohlsen Construction Co. president, was in stable condition Thursday night at Lancaster General Hospital, a nursing supervisor said. He was operated on July 6.

Harry R. Harmon, Wohlsen Construction's attorney, said the injury occurred when Wohlsen visited the company's construction project at the Brandywine River Museum in Chadds Ford on June 8.

Wohlsen Construction, with headquarters at 548 Steel Way, is the general contractor for the museum's $2.5 million expansion.

A Wohlsen employee, who was there to record evidence of union-caused disruptions and equipment damage, videotaped the assault.

Harmon said pickets with the Philadelphia Area Building and Construction Trades Council, protesting because Wohlsen Construction is a non-union contractor, assaulted Wohlsen and three companions.

The pickets punched Wohlsen's head and body, spit in his face and threw him to the ground, Harmon said. Harmon was one of the three men with Wohlsen.

Wohlsen at first thought he suffered minor injuries, but later he began getting severe head and neck pains. After visiting a doctor several times, he checked into the hospital July 4. He was found to have a subdural hemorrhage.

Dr. Daniel C. Good performed surgery to remove a blood clot.

Harmon said no arrests were made in the assault. He said charges were withdrawn by Wohlsen Construction in return for a union pledge not to picket.

But the agreement was reached before the extent of Wohlsen's injury was known. The company has not decided whether to refile the charges.

Cpl. Gerald Zimmerman, Franklin Center (Delaware County) State Police, said the company withdrew its charges of criminal mischief, harassment and robbery against the pickets on June 19.

The business manager for the Philadelphia council, Pat Gillespie, confirmed "there was some sort of demonstration" at the museum "in early June or late May," but said he knew of no vandalism, property damage or violence.

Harmon said the Chadds Ford in "———" arrived at the work site June 7. The next day, Wohlsen, Harmon and company employees Ron Epps and Kevin Snoke went to gather information needed for a court injunction to limit picketing.

The four arrived at the museum about 7 a.m. They found 65 picketers on the Route 1 site in two groups. As the men drove past one group of 20, the demonstrators poured milk over the car and pounded on it.

Harmon and Epps, the cameraman, got out of the car and walked away. Harmon said he was punched, pushed, had hot coffee thrown on him and was thrown to the ground. Wohlsen, who was 30 yards from Harmon and Epps, ran over to help.

Three of the demonstrators turned on Wohlsen and began punching him. They grabbed the $200 Sony videotape camera from Epps and smashed it. But they failed to get the videotape.

Harmon said the picketers "realized they had lost their cool and pulled back." Those involved in the assault, got in a car and drove away minutes before state police arrived.

Wohlsen "was on his feet at the end of it," Harmon said. "He stayed with me for the next hour or two, checking on our men and equipment."

Harmon said he discovered two trucks had windshields broken, three trucks had body damage and a tractor-trailer had its hydraulic lines cut and tires slashed.

That afternoon, the company officials went to the Delaware County Court of Common Pleas and got an injunction limiting the number of picketers to three.

[Fron the Philadelphia (PA) Inquirer, Sept. 27, 1983]

RESTAURANT OWNER, UNION SETTLE DISPUTE

(By Lucinda Fleeson)

A man trying, to open a Chinese restaurant in Northeast Philadelphia has secured a promise from the carpenters union to leave him alone, after a week of confrontation in which the restaurant was vandalized and each side accused the other of pulling guns.

The bizarre week of confrontation began Sept. 19, when Wang Yau, 31, went to his planned China Garden restaurant at 6501 Roosevelt Blvd. and found $3,000 worth of damage to renovation construction.

Newly installed dry-wall board had been ripped down, insulation destroyed and tools stolen, police said.

Francis Laffey, business agent for Local 1856, a member of the Metropolitan District Council of Carpenters and Joiners, denied yesterday that the union had been responsible for the vandalism. There have been no arrests in connection with the incident.

The day after Yau found the damage, about six pickets from the carpenters union and other building trades unions showed up outside the restaurant.

Yau, who also owns the Superstar restaurant in Center City, said four men had told him that he had to hire union carpenters, and that the cost of the renovation job would be $95,000 at union rates. Yau said that one of the men demanded that the restaurant owner pay $50,000 to the union if he did not hire union carpenters.

Yau estimated that the job would cost $24,000 if he did it himself with his friends and relatives.

Yau said yesterday in an interview that a union member pulled a gun on him last Tuesday, stuck it in his stomach and demanded the money. "He said, 'I give you 24 hours to think about whether you want a restaurant, you want to open, you want your life, or you want your money.' " Yau quoted the unidentified union member.

Yau said that four union members kicked over work tables at the restaurant, and each pulled a knife.

On Thursday, at another confrontation between Yau and representatives of Local 1856. Yau said he told the union that he did not have $50,000, but offered the carpenters business agent, Francis Laffey, $3,000 to "leave me alone"—an offer that he said the union turned down. Yau said he had his own gun with him at the time.

Laffey gave a different account, and said that Yau pulled a gun on him and threatened to kill him. Laffey confirmed that Yau offered him $3,000, but said he repeatedly told the restaurant owner that he didn't want his money, he only wanted Yau to hire union carpenters. Laffey said Yau also offered him a partnership in the restaurant and offered to play Russian roulette with him.

Laffey said yesterday that the union would no longer meet with Yau or picket the China Garden restaurant. "It took us all this to realize that it was only a small amount of work. He offered us $3,000, but it's such a small amount of work that he could have done it at union rates for half that amount.

"There will be no more pickets. He doesn't want to talk, he wants to shoot. And I'm not going to get shot over a week's worth of work."

Police said the confrontation apparently grew out of a misunderstanding when union members saw construction work and did not know that it was being performed by Yau and friends and relatives.

[From the Welcomat, Philadelphia, PA, Sept. 21, 1983]

UNFRIENDLY PERSUASION

(By Jill Schoenstein)

A woman who lives on the 2100 block of South Street noticed a gray vintage SEPTA bus parked beside 2120 South Street the morning of August 23rd. She noticed the bus because it was the kind Philadelphians have not seen in service since 1969; and she noticed the 15 or so men who got out of the bus and entered the house because they seemed similarly misplaced.

"They were all very big," she remembers, "and all wearing T-shirts. Some of the shirts had a logo on them that said. "Union Carpenters Hit Harder."

Sigmund Kaye, owner of the building, was also inside. The shell, as houses in that state of disrepair are called, is one that he has been renovating—with non-union labor—in recent months. Kaye had entered the building to investigate loud noises he had heard—banging and crashes that could not have been made by his own carpentry crew. Once inside, Kaye says he found that his three non-union carpenters were nowhere to be seen.

Instead, Kaye says he saw the building being destroyed by 15 husky men, who were bashing in the drywall with two-by-fours. Without identifying himself—he was wearing shorts for a golf outing later that afternoon—Kaye demanded an explanation.

"None of your business," was the only response he recalls being given before the 15 men turned their attention from the drywall and formed a circle around him. They battered Kaye's face, kicked his knees and then boarded the bus. Kaye says he staggered after the bus and took down its license plate number.

Kaye then called the police—who, he says, have linked the plate number to a vehicle belonging to the metropolitan district council headquarters of the United Brotherhood of Carpenters and Joiners of America, a 10,000-member group better known as the "carpenters' union." Kaye has declined to reveal the license plate number, but district council president Edward Coryell acknowledged to me that the union owns such a bus, which he said is used to transport union members from site to site. (Coryell denied any knowledge of the incident described by Kaye.)

"It appears to us," says Kaye's lawyer. Daniel Bernheim, "that agents of the carpenters' union are responsible for what happened to Mr. Kaye"—presumably because Kaye was not using union labor at his South Street renovation job.

Theoretically, a contractor is legally entitled to hire whomever he wants—union or non-union—for a construction job. The primary bargaining tools at a union's disposal—again, in theory—are its ability to command the loyalty of the best workers in a given area and to withhold their services or embarrass contractors through the use of picket lines.

In practice, of course, some unions prefer to make their points through physical intimidation. And so fear of illegal, violence often becomes the reason why a contractor chooses to use union labor.

But such tactics would hardly seem necessary among union construction organizers in Philadelphia, where, according to a member of the carpenters' union rank and file, the vast majority of the building jobs are already unionized. Nevertheless, members of the carpenters' union say that for the past five months their union has been dispatching members in the gray bus to picket non-union construction sites. And while they claim that the Kaye beating was an exception, they admit that a potential for further violence exists.

"The people who ride on that bus have no special training," one union member told me. Often, he says, "the business agent calls people up in the middle of the night. Out of 10,000 people, there's a group who are more than willing to go. You get a guy whose wife's been yelling at him all week and put him on the bus."

A witness to Kaye's attack says that he recognized the bus "and knew what it was there for" when he saw it roll down South Street on August 23rd Kaye himself says that the moment he saw the bus in front of his property he "knew what was going on. The word on the street is that the bus travels around the area doing this kind of thing." And, Kaye adds, the bus had been to 2110 South Street before—some three weeks earlier.

On that first visit, Kaye says, a passenger from the bus entered his property to indicate the union's disapproval of non-unionized job. The man proclaimed it to be "quitting time" for the non-union carpenters at work and then chased them out of the building, handing the foreman a calling card bearing the name of a carpenters' union business agent. The foreman passed the card on to his supervisor, Bill Staples, who gave it to Kaye, who called the union business agent named on the card (Kaye declines to reveal the agent's name).

(These agents of the carpenters' union divide up and manage the union-contracted jobs in a given district. In Philadelphia, where there are about 15 business agents, each is responsible for about 75 sites and about 500 men.)

"I called the guy," says Kaye, "and came to an agreement with him. I would hire one union carpenter to work along with the three non-union men I had on the job." But the union man never got a chance to start, for he was slated to begin work sometime later in the week of August 23rd, when the beating occurred.

"The whole thing should not have happened," Bill Staples says, referring to Kaye's attack. "We had a deal with the union." Indeed, Kaye says the union business agent himself told Kaye that the beating incident was "an accident and a mistake." Bernheim, Kaye's attorney, also says that the business agent seemed genuinely surprised to learn "that the owner of the property had been beaten," and sources within the union point out that the business agent could not have dispatched the bus to South Street—only the president of the district council. Edward Coryell, has that authority. (Coryell himself refused to comment on who exactly is responsible for dispatching the bus.)

Kaye says that the business agent has now offered to make amends by providing a union carpenter free of charge for three weeks of labor. But Kaye says he is considering filing a civil suit against the carpenters' union and has also filed a complaint with the police.

Detective William Daisey of the 17th Police District says that the investigation into Kaye's beating "is definitely going on and will be stepped up in the next week or so. Right now we're trying to contact the union and certain other people. But the union is referring us to union lawyers and we'd rather speak to people who are in the union."

But the question of how such incidents can be prevented in the future remains. As one carpenter from the union remarked to me, "If they (the union leadership) continue to use that bus, something serious is going to happen sooner or later."

[Strike-related violence directed against employees of Phelps-Dodge in Arizona, as reported by the Associated Press and the Washington Post.]

SHOOTING OF WORKER'S CHILD

AJO, Ariz. (AP)—A 3-year old daughter of a copper worker who has been crossing picket lines was shot and critically injured while she slept in her bedroom early Wednesday, and a sheriff's deputy said it "appears to be union related."

Keith Tallant said she blamed the shooting of his daughter Chandra on striking Phelps Dodge Corp. employees. He said he was the first worker to cross picket lines after the strike started and that he has been the target of harassment.

Pima County sheriff's detective Ed Beumler said he believed the shooting was union related. Union spokesmen appealed for calm and said they deplored the shooting. They said strikers should not automatically be blamed.

Chandra Tallant was listed in critical condition at St. Joseph's Hospital in Phoenix, said sheriff's Lt. Jack Garchow. The shooting occurred at 12:45 a.m. and a hospital spokeswoman said the child was in surgery until about 8 a.m.

Tallant said he and his wife were awakened by Chandra's screams and that when they went to her bedroom her head was covered with blood.

Sheriff's investigators said a bullet from what appeared to be a small-caliber weapon went through two walls of Tallant's company owned home, through Chandra's pillow and into her head.

[From U.S. News & World Report, Mar. 19, 1984]

WHEN A STRIKE RIPS A SMALL TOWN APART

(By Carey W. English)

MORENCI, ARIZ.—One of the nation's longest-running strikes is leaving a legacy of anger, bitterness and mistrust among the 2,700 residents of this isolated mining town.

Eight months after workers stormed off their jobs at the Phelps Dodge copper mine here, the wounds opened by the strike-related conflict and recrimination are raw and show few signs of healing.

Split by the dispute, neighbors and families have turned against each other in a struggle that has torn apart lifetimes of friendship.

LONG-TERM COSTS

"The feelings are still high on both sides," says the Rev. Wilbur Nolte. "Regardless in whose favor the strike is settled, the animosity and hate will be felt for many, many years to come."

Lawlessness persists. Since the beginning of the year, strike-related violence—against people on both sides—has been picking up, according to Greenlee County Undersheriff Bailey Smith. Rock throwing, broken windows, assaults, slashed tires, sugar in fuel tanks, and acid damage to car bodies to keep the town on edge. Even bombings have been threatened.

No one is immune. Optometrist David Stacy in nearby Clifton says a Phelps Dodge employee on his way to get new eyeglasses was pulled into an alley close to the office and beaten.

"The strike has created terrible tensions in the community," says Stacy president of the Greenlee County Chamber of Commerce and a third-generation resident of the area. "Half of my patients are working and half are not. I feel for the troubles each side is being put through."

Nighttime sabotage of property is frequent. Oil-pan screws and wheel-lug nuts on the car of one prominent Morenci businessman were loosened in his driveway while his family slept. His children have been the target of kidnapping threats.

The strike is widely regarded by analysts as one of the most antagonistic labor confrontations in recent years.

The hostilities first broke out when Phelps Dodge refused to close the mine for the duration of the dispute and started to hire replacement workers in August.

FORCE MEETS FORCE

Strikers, about 1,000 strong and armed with clubs, chains and stones, massed outside the company gates, forcing a 10-day shutdown. Only after about 800 state highway-patrol officers and National Guard troops were called in and after the entrance was protected by sharpshooters did the mine reopen.

At issue in the walkout were Phelps Dodge's efforts to renegotiate its contract after losing 74 million dollars in 1982. Refusing to give up cost-of-living wage provisions, the unions struck the company's Arizona operations last July 1 in a move that many workers expected would force the company to sign a new pact.

Instead, Phelps Dodge took a hard-line stand, warning workers that they stood to lose their jobs if they failed to return. Today, with nearly 700 newly hired workers and more than 700 returning employes on board, company officials consider the strike to be effectively over.

Since unemployment was relatively high around the country, replacements for the strikers were not hard to find. "How could I pass it up?" says one new Phelps Dodge employe. "Last year, I worked only eight weeks. When this opened up, I grabbed it."

Production at the mine and plant with this new work force is now at capacity: 100,000 tons of ore a day in nonstop operations.

Moreover, the company is achieving the cost-control goals it sought in the contract bargaining. Entry-level wages have been slashed from $11.09 an hour to $9 an hour, with start-up pay for the first 1,040 hours of work at only $7 an hour. Productivity also has improved.

"We've cut our overall costs at this plant by 5 percent plus," says James Madison, general superintendent. Adds Richard Boland, director of personnel services: "In one area of the plant, we're seeing an 18 percent increase in productivity from our returning employes, while our new employes there are performing significantly better than average."

UNIONS' STATUS IN DOUBT

Few residents minimize the lingering effects of the strike on the community. More trouble is expected later this spring and summer if the walkout continues, particularly if the company legally challenges the rights of the nine unions to represent workers at the mine and ore-processing plant.

Doing that, strikers warn, would ignite a new wave of violence that could spill over into other mines in the copper industry.

An incalculable toll has been taken in personal terms. "It will take 100 years, if then," says Dr. Jorge O'Leary, "before it is ever again like it was." Fired by Phelps Dodge from his $50,000-a-year job as plant doctor, he now operates a clinic in Clifton for strikers and their families.

"HURTS LIKE HELL"

Many of the sharpest pains are felt inside the home, where the strike has pitted parent against child and brother against brother.

Claro Dominguez, 43, a striking truckdriver, watched his brother, sister and daughter cross his union's picket line after the mine was reopened.

"It hurts like hell," says Dominguez. "I don't associate with my brother and sister any more. I still talk to my daughter, but it's hard. Our family will never be the same again."

Jackie Norton, owner of a Clifton restaurant, employs two strikers, and her husband is also on strike. Their son is working at the mine. "We communicate, but there's a strain between us I wish were not there," she says.

Household budgets are stretched thin. Striker Ruben Chavez, once a $110-a-day furnace operator with a wife and three children to support, is just barely getting by on his $50 a week in strike benefits. "We're more than $5,000 in debt," he says.

The strike has touched businesses, too. Until picketing was moved closer to the plant just days ago, Clifton jeweler Rocky Clonts felt the pinch on weekday afternoons when strikers turned out across the street to hurl such epithets as "scab" and "strikebreaker" at workers leaving their shift.

"The bulk of my customers are union," says Clonts, "and a lot of them were on that line. After 2 p.m., my business was off at least 50 percent."

UNRAVELING WORLD

For most residents, the strike has been especially hard to take because the community was so closely knit before. Morenci, a company town about 220 miles from Phoenix, depended heavily on Phelps Dodge for everything from shelter to grocery stores to entertainment.

The company, known to workers as "Mother Dodge," provides low-cost housing, the area's major department store, a library, hospital, restaurant and motel, as well as a softball field for its employes. Even the town's new 11.5-million-dollar high school is being paid for by Morenci's only property-tax payer, Phelps Dodge.

In the past, many residents of the community viewed strikes more as regular opportunities for the company to do needed plant repairs and for workers to take extended vacations than as critical showdowns.

"This used to be a nice place to live and raise a family because everyone worked at the same place and knew each other," says Angel Rodriguez, a 15-year veteran of Phelps Dodge and president of Local 616 of the United Steelworkers. "But we're at each other's throats now. There's not one community activity that hasn't been affected by the strike."

Margaret Dominguez, wife of striker Claro, says Morenci "was a quiet, peaceful, friendly little town. I could trust my kids to go walking alone. Not any more. I don't even know who to talk to. It's awful."

FEW PASTTIMES

Much of the town's social life has dried up. "In the evenings, people just don't go out like they used to," says Mike Looby, manager of the Phelps Dodge Mercantile Company store. "There are things still going on here that never let you totally relax."

Residents say such unease and suspicion pervade the community. "The continued fear is frightening," says the Rev. Mr. Nolte's wife Rachel. Sunday school attendance is off 25 percent at Shepherd of the Hills Presbyterian-American Baptist Church because, she says members of the congregation fear harassment going to and from church.

"One of the most terrifying things to me is the effect this is having on our children," she says. "We have children in the community who are already needing psychiatric help because of what they've seen their parents go through and what they've experienced at school."

Although flare-ups still occur among students over the strike, educators say a tacit understanding has developed among parents on both sides of the issue that the schools should be considered off limits in the dispute.

"The youngsters are under tremendous emotional strain, but we've gotten a great deal of parental support—from families that are striking and families that are working—promising to keep this out of the schools," says Principal John Glodis of Morenci High School.

At the outset of the school year, educators met with groups of students to discuss the strike.

"The question we asked them to consider," Glodis says, "was did they think anything they said or did in school would settle this labor-management dispute. Our answer was no and that they were here for only one reason—to pursue their education."

School officials say that, even though there have been problems, this approach worked. The extra effort by parents and students to minimize conflict in the schools is also paying unexpected dividends. "We've had fewer semester failures this last year than we've had in the past 10 years, and fewer discipline problems," says Glosis.

HARDENING DIFFERENCES

Despite the length of the walkout, Phelps Dodge has not softened its stand against the unions. Company officials say that even if the dispute were settled, they would not replace the 1,400 hourly workers now employed at the mine with strikers. "We consider our present work force permanent," says Madson.

The union is equally adamant. "We won't settle a contract unless our people go back to work," says Rodriguez of the Steelworkers union. "They're not going to break us and throw us out of our community. This is our home."

But that is in question, too. Phelps Dodge officials say some 300 strikers are still living in housing that the company wants to make available to the new workers it has hired since the strike began. The company has made it clear that, eventually, it will evict those strikers who haven't left voluntarily.

No matter how it is resolved, the strike has left an indelible imprint. Says Tony Medina, secretary-treasurer of the Machinists local: "As long as we're alive, we'll never forget this strike."

[Violence or threats of violence by union officials acting as agents for organized crime, as reported by New York magazine.]

[From New York magazine, July 25, 1983]

GANGBUSTERS: THE BROOKLYN STRIKE FORCE MAKES WAR ON CRIME

(By Nicholas Pileggi)

"Nobody wants to hurt you," said Theodore Maritas, president of the New York carpenters' union and a 1977 campaign official for Ed Koch. "You're being nice. [But] we're going to have to meet people. . . . You know, ya took a million dollars out of people's mouths."

Maritas was in his East 23rd Street office, lecturing a hapless builder on the unwritten rules of the construction industry. He didn't know his lecture was being taped by the F.B.I.

The builder had unwittingly broken a rule by submitting an honest, low bid—thus ruining a scheme in which Maritas and Vincent DiNapoli, a Bronx mobster, had expected to make $500,000. Maritas was stern but helpful in explaining the way things work in New York.

"You have no idea what goes on in this town when guys get out of order," he said. "I'm gonna tell you something. We had a guy who was looking to take the I.B.M. Building. This guy has got so much trouble now, he wishes he never heard of the I.B.M. Building. . . . You know, we steer these things. You think things just f— happen out of the sky?"

Maritas's insights into underworld business practices were presented to the public through the good works of the federal Organized Crime Strike Force in Brooklyn—the same outfit that brought you ABSCAM. At a time when other prosecutors seem to have given up fighting gangsters, when President Reagan's best effort is to call for a multi-million-dollar fact-finding commission, and when New York Attorney General Robert Abrams says the crime syndicates are better organized than government, the Brooklyn strike force has battled the mob and came out a winner.

In the last few years alone, the prosecutors and agents of the strike force have put away scores of crooked union leaders, corrupt power brokers and mob chieftains. The group's expertise in handling cases—it's never had a conviction reversed or lost a challenge to its eavesdropping or wiretap evidence—has made it a model for the thirteen other strike forces around the country.

"We're in mob heaven here," said strike-force attorney Douglas Grover, trying to explain the group's success. "We've got two racetracks, the Brooklyn waterfront, two airports, and the home offices for five of the largest organized-crime families in the country. Why shouldn't we be kept busy?"

Indeed, the dark side of the strike-force success story is the glimpse it offers into the way the mob is operating in New York City today. The underworld has been around for years, of course, but the strike force's stunning collection of electronic evidence documents just how cozy organized crime and big business have become. Mob payoffs are a virtual tax in some industries. Corrupt unions are taken as a fact of life. Legitimate businessmen hardly mask their dealings with notorious gangsters (see page 28). The whole system runs with a frightening lack of inhibition.

"You can hear it in the wires," said strike-force chief Edward A. McDonald. "Reading a court transcript doesn't really convey how acceptable corruption has become in certain parts of the city. You've got to hear the casualness with which these illegal schemes are hatched. You've got to see the money change hands while the participants talk about their kids' graduations.

"It's no longer a matter of chasing after movie godfathers, with their drug deals, gambling operations, and shakedowns," McDonald said. "Today, rather than finding organized-crime types muscling in on legitimate businessmen, we are increasingly finding ostensibly legitimate businessmen going to the mob and crooked unions for that competitive illegal edge."

Probably nothing illustrates the situation better than the roster of strike-force targets. Recent convictions and sentences include:

Vincent DeLillo, president of Clearview Concrete—three years in prison for conspiracy to defraud the billion-dollar Southwest Sewer District;

Edwin "Buzz" Schwenk, G.O.P. chairman of Suffolk County—60 days in jail for tax evasion;

Joseph Tonelli, president of the 400,000-member paperworkers' union and chairman of the state's Racing Commission—one year for embezzling $33,000 in union funds;

George Snyder, secretary-treasurer of Teamsters Local 806—five years for embezzling $1.2 million in union funds and then pretending it was his "severance" pay;

Eugene Mastropieri, Queens city councilman—three years for perjury and tax evasion after laundering $500,000 for drug dealers;

George Boylan, business manager for Boilermakers Local 5—ten years for receiving $1 million in payoffs from contractors of power plants in the metropolitan area;

Louis Sanzo, president of Local 29 of the blasters' union—three years for tax evasion;

Carmine "The Snake" Persico, boss of the Colombo crime family—five years for conspiring to get himself moved to a prison in New York;

Carmine "The Doctor" Lombardozzi, a *capo* in the Gambino crime family—six months for tax evasion. Lombardozzi thought he had things so under control that he used a Kiwanis Club in Mill Basin as a front for his loansharking operation.

The organized crime strike force of the Eastern District of New York—U.S. Attorney Raymond Dearie's district—was formed by the Justice Department in 1969 with a mandate to wage war on organized crime. Tucked away behind double-thick and double-locked steel doors in a downtown-Brooklyn office building, the thirteen strike-force prosecutors work in a warren of tiny cubicles and interrogation rooms stacked high with court transcripts and videotapes of crimes. Their cases are put together with the help of handpicked investigators from 22 different law-enforcement agencies, ranging at times from the Royal Canadian Mounted Police to the New York City Police Department. Most of the prosecutors are in their twenties and thirties and earn between $35,000 and $50,000—a fraction of what they could make in private practice and a fraction of the money made by the defense attorneys they face in court.

These contemporary gangbusters are very different from their untouchable predecessors. Today, strike-force attorneys are more likely to be armed with computers than machine guns. A knowledge of accounting is worth more than a facility at the third degree. Most of the cases are made with high-tech equipment. There are few chases and even fewer gunpoint arrests. Indeed, the majority of the defendants in strike-force cases never even get arrested. Instead, they're indicted by grand juries, and a date for their appearance for arraignment is worked out with their lawyers. It's all very civilized, until the conviction and the clang of the slammer door.

"The most exciting thing we ever get around to doing," said Detective Douglas Le Vien, the city's Police Department liaison to the strike force, "is tail limos in Rent-a-Wrecks and spy on golf games through our kids' binoculars."

Laura Brevetti, the one woman on the strike force and a native of Brooklyn, where many strike-force targets live, said her line of work worries her mother. "She worries that I don't get enough dates from the neighborhood."

Still, for a young lawyer, a job with the Brooklyn strike force is one of the most coveted in the country. "I've been a prosecutor for seven years, and I've been doing mob guys since 1978," said Brevetti. "But white-collar crime, labor racketeering, O.C. [organized crime], and official corruption—that's the meat. If you like being a prosecutor, that's what you want to be doing."

And there's plenty to do. Corruption is so extensive and so accepted, said strike-force chief McDonald, that hoodlums are "shocked when they're caught."

Not long ago, McDonald was questioning Henry Hill, a onetime associate in the Paul Vario mob who turned government witness after his arrest in drug conspiracy.

"I was talking to him about the Lufthansa robbery, about murders, about a narcotics ring he ran, about Vairo and Jimmy 'The Gent' Burke, and about political assassinations in Italy ordered by Italian financier Michele Sindona. Hill kept mentioning that he was in Boston."

McDonald finally asked him what he was doing up there. "He said he was fixing Boston College basketball games. I played for Boston College! I almost went across the table at him, but to guys like Hill it was just a part of doing business. Well, it was true," McDonald continued. "Hill had gotten to Rick Kuhn, one of the team's forwards, as well as others. I prosecuted that one myself, and Kuhn got ten years. Now he's cooperating, and we've just indicted Ernie Cobb, the team's star."

Thomas Puccio, who headed the Brooklyn strike force from 1977 until going into private practice last year, said the organized-crime problem is more subtle than most law-enforcement people think. "The mob today has begun looking for pools of concentrated economic power," Puccio said. 'They are looking at banks, brokerage firms, teamster pension funds, and at government programs that they can rip off, such as summer lunch programs, nursing home and day-care-center leases, food stamps, and Small Business Administration loans.

"In order to do this," said Puccio, "the mob must seek out, cultivate, and deal with crooked public officials. Organized crime as it exists today cannot survive without public officials willing and able to go on the mob's payroll."

The Maritas case, for example, presents an extraordinary picture of the collusion that has escalated the cost of doing business in New York. The strike-force investigation dealt with selling protection to contractors, price-fixing schemes on major rehabilitation projects, and pension-fund scams. There was hardly a legal or ethical corner that the defendants didn't try to cut.

The investigation actually began in 1977 as a result of a wide-ranging inquiry into corruption in construction on Long Island. Eventually, the strike force gathered enough information about Maritas, who'd been leader of the 25,000-member New York district council of carpenters since 1977, to install court-approved eavesdropping devices in his union office in 1979. In the months that followed, strike-force attorneys heard Maritas brag about his political connections and about the powerful mobsters who supported his way of doing business. He'd been co-chairman of Ed Koch's labor committee during the 1977 mayoral campaign and later was appointed to the city's Public Development Corporation, which puts together building projects. On the tapes, Maritas boasted that he'd raised $100,000 for the Koch campaign. He talked of visiting Carlo Gambino, the late crime boss, though he conceded that he avoided being seen with organized-crime figures. "Hey, I'd go to the White House, I meet the governor. . . . I can't be seen hanging around with wise guys." He talked about "belonging" to Peter DeFeo, a *capo* in the Genovese crime family, and explained to one visitor, "As far as Pete's concerned, you know this . . . the carpenters are his, let's face it, including myself."

Listening to the tapes, strike-force attorneys quickly noticed that the name of Vincent DiNapoli kept coming up. Sometimes DiNapoli was described as an owner of four dry-wall-construction companies in the Bronx. Other times he was identified as Maritas's partner in bid-rigging scams for construction projects. The prosecutors knew DiNapoli in several other contexts, however. In 1970, DiNapoli was convicted of possession of stolen property. In 1975, according to McDonald, the Federal Drug Enforcement Administration listed him as a suspected "distributor of narcotics." In 1976, he was convicted of conspiring to bribe jockeys in various horse races in Pennsylvania.

As a businessman, DiNapoli has apparently been quite successful. His construction companies bring in millions a year. But the most valuable project he's helped construct isn't made of brick and mortar. It's an intricate Bronx network of mobsters, politicians, union officials, and businessmen that puts DiNapoli in an ideal position to win friends and influence people.

In 1978, DiNapoli helped to start the Pelham Bay Democratic Club and established his old buddy Louis Moscatiello as district leader, a job that carries weight in the endorsement of local legislators, the recommendation of judges, and the election of the county leader. The Bronx County leader was then and is now Stanley Friedman, a partner in Roy Cohn's law firm, which represented DiNapoli when the strike force caught up with him last year.

DiNapoli also helped Moscatiello start a new building-trades union, Plasters Local 530. It soon began to represent the workers at DiNapoli's own companies. Moscatiello has denied giving DiNapoli a sweetheart contract. He admitted in a deposition, however, that DiNapoli had paid his employees $3 less an hour than comparable workers represented by different locals and that none of DiNapoli's companies had ever paid into the union's welfare or pension fund.

Moscatiello said he owes nothing to DiNapoli. "He's my friend—what does that mean? If his life is the way they [the police] say, mine is another way. If I was going to be part of organized crime, I'd be out in the street. I've never done anything wrong, in the union, in the club, or running for City Council."

The Reverend Louis Gigante, a former city councilman from the Bronx and a longtime friend of DiNapoli's, agreed: "Moscatiello is the most honest guy you would ever want to meet. And DiNapoli is a community-minded businessman who wants to do something good for this neighborhood."

Some of that "good" has been lucrative for DiNapoli, however. Since 1977, DiNapoli and the companies he controls have received $25-million in federal subsidies for work as a subcontractor of federally financed rehabilitation and reconstruction projects in South Bronx tenements.

In 1981, bolstered by hundreds of hours of tapes, the strike force finally pulled the plug on Maritas. DiNapoli, and ten other contractors and union officials. The prosecutors charged them with extortion, racketeering, and taking $125,000 in payoffs to permit contractors to use non-union workers on construction projects.

The first trial, in late 1981, ended in a mistrial. But it revealed so much about the information the strike force had amassed that all the defendants except Maritas decided to plead guilty rather than face a second trial. Maritas' refusal to buckle meant that the strike force could reintroduce many of the tapes on which top mobsters were mentioned. At a second trial, some of those mobsters might even be called as witnesses. On March 18, 1982, eight days before he was to go on trial, Maritas disappeared, along with his silver-colored Continental. Five days later, his wallet, with his credit cards and identification still in it, was found in the water near the Throgs Neck Bridge.

"The F.B.I. developed information that [Maritas] was likely to be killed," Lothar Genge, the strike-force prosecutor, said at the time. "We brought him into the office several months ago, and we apprised him of the information. We thought it was serious." Genge said that Maritas refused any protection. "I will take my chances," Maritas said.

Four months after Maritas disappeared, Vincent DiNapoli was sentenced to five years in prison and ordered to return a $33,000 payoff he'd accepted from an undercover agent.

Within months, DiNapoli's lawyer, Michael Rosen, of the Roy Cohn-Stanley Friedman firm, had filed a petition with the judge asking that DiNapoli be permitted to work in a "program of social restitution" as an alternative to prison. Among the letters supporting the petition were several from Moscatiello's old pals, including Congressman Mario Biaggi, State Senators John Calandra and Israel Ruiz, and Assemblymen Guy Velella and José Rivera. Judge George C. Pratt denied the petition, and DiNapoli is now in the federal penitentiary in Danbury.

Today, even though Maritas is presumed murdered and DiNapoli is in jail, the strike-force investigation into the dry-wall industry continues. Company executives, union officials, and workers are being called before a grand jury looking into other kickback, pension-fraud, tax-evasion, and extortion schemes.

These days, according to the strike-force prosecutors and agents, it's sometimes difficult to distinguish among the businessmen, labor leaders, politicians, and racketeers. They go to the same country clubs, send gifts to the weddings of one another's children, take vacations together, and generally work out schemes through which they manage to profit at the expense of the public.

Despite the social mingling, however, mobsters still act like mobsters.

Not long ago, Ralph Paradiso, of the Gambino crime family, and three other hoods began extorting money from an 80-year-old linen supplier. On one occasion, they applied a propane torch to the man's eyes, temporarily blinding him. The strike force learned what was going on, but the victim was too terrified to testify.

"Before putting the torch to the man's eyes, the hoods actually practiced in their office by putting pieces of paper in front of the torch to see how close they could come before it burned," said Laura Brevetti. "That's the side of the mob you don't see in The Godfather. By using videotapes and informants, we got those guys fourteen years, and the old man never had to testify."

"When you're dealing with mob guys, the nasty side is never too far away," added Kenneth McCallion, who recently prosecuted Daniel Cunningham, president of two security-guard unions, for racketeering, bribery, and embezzling union funds.

"In one of the secretly recorded conversations, we had Cunningham, who was connected with the Franzese mob, admitting he took part in the 1977 murder of two men while organizing the Brotherhood of Cartmen and Haulers of North America in Nassau and Suffolk," McCallion said. "The two men who had worked for Cunningham in organizing the local, had breached the rules and tried to organize in

Brooklyn and queens, where mob bosses had forbidden such efforts. When Cunningham could not keep the two men from continuing their unauthorized organizing, they were lured to a Queens diner, where they were grabbed. Their bodies—each shot in the head—were found in a car trunk in Kennedy's very long-term-parking lot on December 12, 1977."

With Cunningham now in prison on the racketeering charges, the murders are still under investigation.

In the past, fear of mob retaliation often kept victims from coming forward and witnesses from cooperating. Today, while that's still true in some cases, many of the "victims" have powerful economic reasons not to complain.

"The greatest difficulty in getting cooperation from employers today comes from their fear of losing the economic advantage of having a mob-run union." said McCallion. "They like the profits. They want to keep things the way they are."

In the construction industry, said prosecutor Michael Guadagno, "builders say they can't afford to fight the mob and put up buildings at the same time."

The real loser in this sort of climate, of course, is the public. Corruption in the construction industry is so widespread, according to a New York Times report, that concrete prices in New York are 70 percent higher than in any other northeastern city with comparable supply conditions and union contracts. Guadagno said he'd even found examples of architectural plans' being changed just to suit mob-run unions. In one case, a builder made plans to use structural steel and prefabricated concrete in a $100-million project. Then John Cody, president of Teamsters Local 282, stepped up and warned that his 4,000-member union would picket the project if those cheaper materials were used. Cody's union, which controls cement workers and all deliveries to building sites from Manhatten to Montauk, could close down any project it wanted—at a cost to the contractor of millions of dollars a day. In this case, according to Guadagno, the builder changed his plans immediately, switching to the more expensive ready-mix concrete delivered by Cody's members and thereby adding a $10-million bill to the project.

For four years starting in 1978, Guadagno tried to build a case against Cody. Much of the union leader's street-level muscle, the prosecutor said, came from his association with the Gambino crime family. In 1973, according to F.B.I. reports, Carlo Gambino himself attended the wedding of Cody's son. The orchestra played the Godfather theme when he arrived, but Gambino was apparently unmoved by the tribute; he'd never seen the film.

Last year, after twenty years as a power in the construction industry, Cody was convicted of labor racketeering and sentenced to five years in prison and $80,000 in fines.

Piercing the network of corruption these days takes a special kind of prosecution. "We'll sit down and discuss who in organized crime is still active and who's worth targeting," said former strike-force attorney Joel Cohen. "We look for the key people who we know to be involved and who have been able to insulate themselves from normal prosecution over the years."

Because of its special mandate, the strike force can put in the time it takes to make a case. And it's adept at using informants and undercover agents—called "undercovers" by the prosecutors—to gather key bits of evidence. "It took I.R.S. undercover Richard Annicharico six months just to get introduced to Carmine Persico's henchmen," Cohen said. "Once he was inside, however, and they thought he was a corrupt I.R.S. agenct working for the strike force, he couldn't keep them away. One by one they toppled. We got Carmine, his sidekick Hugh Apples' McIntoh, and his cousin Andrew Russo, for attempted bribery. And then the F.B.I. got Carmine's brother Alphonse 'Allie Boy' Persico, and even his driver, Michael Bolino, for loansharking." (Police surveillants at Andrew Russo's 1979 wedding spotted singer Frankie Avalon as well as actor James Caan, who'd become a friend of the Persico crowd while researching his role in The Godfather.)

The Cody case was tougher, according to Guadagno. "It took four or five years from beginning to end. Cody even had anti-bugging devices in his house and checked to see if his guests were wired. Once we had an informant in there and the alarm went off. Our guy was terrified. He know he wasn't wearing a wire, but he didn't know who was. Finally, after Cody screamed and yelled, somebody double-checked the televison set, and it was the TV that set off his anti-bugging machine."

Some critics of the strike force say it overuses informants. In particular, defense attorneys and some civil-liberties advocates criticize the use of undercover co-conspirators—agents, informants, or witnesses who actually engage in crime with the targets of the investigation. The technique—widely used in ABSCAM—has been challenged on the ground that it borders on entrapment. In May, however, the technique received something of an endorsement when the U.S. Supreme Court refused to hear the ABSCAM defendants' final appeal. Several of them went to prison two weeks ago.

Despite the informants, few strike-force cases could be made without the use of electronic equipment that not only records but photographs targets. "We would never have gotten convictions on the ABSCAM cases without the video cameras," said Puccio. "Some of the defendants never said a word while taking the money, and that, of course, would never have been picked up on a regular tape."

The strike force is secretive about the devices it uses. In court, there's no requirement to identify the equipment or explain how it was placed in the target's home or office. Some of the equipment comes from the federal government's James Bond-style technology unit and includes, for example, cameras with owl-eyed wide-angle lenses that photograph in the dark and can be hidden in a door hinge.

Of course, these recording devices can't be planted indiscriminately. To get court approval, the prosecutors must show probable cause to believe a crime has been committed, and they must reapply to the court every 30 days to extent the wiretap or videotape order.

But there's something oddly appropriate in this crime-fighting advance; the era of elusive, illegal business deals has ushered in a compelementary era of high-tech prosecution. While the new technology isn't going to win the war on organized crime, it may turn the odds a fraction in favor of the good guys.

"The equipment has changed the ball game," McDonald said. "We could never get into the smoke-filled room and see, as well as hear, what was going on. Now we can see the bribery going down, and all I can think is 'Smile, you're on Candid Camera.' "

FRANK PERDUE MEETS THE GODFATHER

(By Jerry Capeci)

Two years ago, Frank Perdue was facing a few problems in his chicken business. The Justice Department had charged him with restraint of trade. Union organizers were rallying the butchers at his Virginia processing plant. And the opening of the first Perdue Chicken Restaurant, in Rego Park, was marred by protests about the company's supposedly anti-union activities.

Frank Perdue had seen his way through business problems before. Since going to work for his father, he'd turned Perdue Farms, of Salisbury, Maryland, into the largest seller of chickens in the Northeast. The company's gross revenues last year were estimated at $430 million by Standard & Poor's, up from $6 million when Perdue became president, in 1952.

To resolve the conflict with the Justice Department, Perdue called his attorney. But to help deal with the unionizing workers, he decided to call on the expertise of a man who'd preceded him into the poultry business by about a dozen years. Perdue got in touch with the two brothers who own Dial Poultry, a Brooklyn company that distributes Perdue chickens in the New York area, and asked them to set up a meeting with their father, Paul Castellano.

Why would Frank Perdue want to talk to this quiet, graying Staten Island man? At 68, Paul Castellano is "unquestionably the boss of the largest and most powerful organized-crime family in America," said Edward A. McDonald, chief of the Organized Crime Strike Force in Brooklyn.

Or as Perdue is said to have told an F.B.I. agent who asked about the meeting, "he's the godfather."

No one is suggesting that Frank Perdue is a mobster, that he did anything illegal in talking to Paul Castellano, or, indeed, that anything illegal came of their meetings. But their relationship illustrates a worrisome fact of business life in America: As organized crime moves into otherwise legitimate enterprises and gets a grip on certain unions, perfectly honest businessmen are sometimes drawn into dealings with gangsters.

In Perdue's case, there's another wrinkle, because the owners of Dial Poultry, though sons of a mobster, have never themselves been convicted of a crime. Their company belongs to the Greater New York Meat and Poultry Dealers Association, an industry group that's at least somewhat selective about its membership. Yet, law-enforcement officials believe, based on taped conversations, that Dial has links to organized crime. A Dial spokesman refused to comment.

As a youngster growing up in Brooklyn, Paul Castellano—his relatives nicknamed him "Big Paul" to distinguish him from a cousin—used to help around a butcher shop. Later, he became a butcher, and law-enforcement authorities said he's kept his hands in the meat-and-poultry business while rising to the top of the 800-member Gambino crime family. His connections certainly helped. His cousin Carlo Gambino headed the family from the mid-fifties through the mid-seventies and was married to Castellano's sister, Kathryn.

Since Gambino's death, in 1976, Castellano has quietly administered the crime family's interests, recently doing much of the work from his new home, in the exclusive Todt Hill section of Staten Island. Much of the business is in loansharking, pornography, and shakedowns. But law-enforcement authorities said that today the Gambino family also was legal and quasi-legal interests in the construction industry, the garment center, the private carting industry, real estate, and the meat-and-poultry business.

Like their father, Joseph Castellano, 45, and Paul Castellano Jr., 43, are butchers by trade. In 1970, the brothers formed Dial Poultry, and the company grew rapidly. Today, Dial distributes poultry from two refrigerated warehouses in Sunset Park to more than 300 butcher shops, grocery stores, and supermarkets in the metropolitan area.

At about the time that Dial was formed, Frank Perdue turned TV pitchman and introduced his brand name chickens into the New York poultry market. Perdue's birds are grown, slaughtered, and packaged at processing plants in Maryland, Delaware, and Virginia and then trucked overnight to the city's four major wholesale markets. There the birds are sold to independent wholesalers—today there are about 25 of them—who distribute poultry to retail outlets.

For several years after Perdue brought his "yeller" chickens to town, he didn't sell to Dial. It's not entirely clear why.

Frank Perdue referred questions about his relationship with Dial to a company spokesman, who asked that his name not be used. Several law enforcement officials who are knowledgeable about the meat-and-poultry industry in New York were willing to talk about Perdue's dealings with Dial, but they also insisted that their names not be used. The accounts from the Perdue company spokesman and the law-enforcement officials differ on some points—as, for example, on why Perdue didn't use Dial at first. The company spokesman said Perdue simply wasn't selling enough chickens to need Dial. But the officials said Perdue was worried about the association with Big Paul Castellano. "He wanted to avoid any underworld links if he could," said one federal source.

By 1976, the brand-name-chicken business in New York was booming, but also getting very competitive. Showell Farms was using a catchy ad campaign to promote its Cookin' Good chicken and Pearl Bailey was singing the virtues of the Paramount bird.

Frank Perdue started selling to Dial. Again, there's a dispute over the reason for the change of policy. The spokesman said Perdue's business was expanding and he needed more distributors. The law-enforcement officials said the mob was bringing its special brand of pressure on Perdue from both the management and the labor side. The officials said that Perdue's chickens weren't being promoted well by the management of at least one major retail chain. "They wouldn't put his chickens on special," said one source. "They left his chickens out of the weekly circulars and began displaying his competitors' products more prominently in their showcases." One man on the board of directors of that retail chain has been identified by authorities as a captain in the Gambino Crime Family.

At the same time, according to the officials Perdue was feeling pressure from the butchers' union, the Amalgamated Meat Cutters and Butcher workmen. Because it represented butchers in all the supermarket chains, the union could have been enormously helpful in promoting a brand of chickens. The head of the union in 1976 was Irving Stern, who spent four months in prison that year on federal tax charges involving payoffs he'd received from supermarket executives and wholesale meat distributors. Stern is described by law-enforcement authorities as a longtime ally of Big Paul Castellano's.

Before Perdue agreed to let Dial distribute his chickens, however, he conducted his own "private investigation," according to one official and found that Big Paul had a reputation for being "honorable" in his dealings. The business relationship between Perdue and Dial was celebrated with an evening out. Frank Perdue was one of Paul Castellano Jr.'s guests at a Frank Sinatra concert at the Westchester Premier Theater.

When the Perdue Chicken Restaurant opened in a Rego Park high rise in February 1981, one of the first people to stop in was Irving Stern. By then Stern was an international vice-president of the United Food and Commercial Workers International Union, a 1.3-million-member labor colossus formed by the merger of the butchers' union and the Retail Clerks International Union.

To enter the restaurant, Stern had to walk past protesters from his own membership who were calling for a boycott of Perdue because of the company's labor practices. But Stern found Perdue inside, and spoke to him about the restaurant business, the officials said. "He was interested in getting a franchise," said one source.

While Stern talked to Perdue, his union was trying to organize 1,000 workers at Perdue's Accomac, Virginia, processing plant.

At that point, Perdue went to Dial and asked to see Big Paul Castellano. The Perdue spokesman said that Frank Perdue met twice with Castellano in 1981 "to discuss the attempts to organize a Perdue plant." Perdue, the spokesman said, thought Castellano might be able to help, but "Mr. Castellano said he was not able to, and the matter was dropped."

The law-enforcement officials provided a few more details. One meeting took place at Paul and Jimmy's, an Italian restaurant on Irving Place. In addition to asking for advice in his fight to beat back the union organizers, Perdue "asked Castellano to get Stern off his back," one source said.

People familiar with the workings of the underworld suggested that Castellano had agreed to meet with Perdue "out of respect." But even if the mobster could help the chicken king, it was unlikely that he would. The mob has a strict credo on dealing with people as prominent as Frank Perdue: Listen, be sociable, talk business, learn a few things. But don't get involved in complicated deals and risk drawing unnecessary and unwanted attention.

In any case, the organizing effort at the Accomac plant was soundly defeated in July 1981.

McDonald, of the strike force, said his office is "aware of allegations of mob involvement in the meat-and-poultry industries and in the labor unions which represent employees in those industries." McDonald wouldn't comment on any specific investigations, but it's known that executives in the meat-and-poultry industry have been interviewed by F.B.I. agents. And in August 1981, F.B.I. agent Joseph O'Brien, whose office is on the sixth floor of the building that houses the Perdue Chicken Restaurant, stopped in to talk to Frank Perdue about his meetings with Big Paul Castellano. O'Brien and his supervisor, Bruce Mouw, said they would not comment. But sources said Perdue readily admitted talking to Castellano about his labor problems.

Meanwhile, several of the other problems Perdue was facing two years ago seem to have cleared up. The restraint-of-trade suit has been dropped by the Justice Department. The protesters have left the chicken restaurant, which is said to be doing well. And Perdue—like its New York rival Paramount—continues to distribute chickens through Dial. "Dial is a very good distributor and has been for seven years." said the Perdue spokesman. "The company is very pleased with their work."

[Violence or threats of violence in Hawaii against the Mungovan family by union officials, as reported by the Honolulu Advertiser, the Maui News, and the Honolulu Star-Bulletin.]

[From the Honolulu Advertiser]

HUNT ON FOR FAKE LAWMEN; TRIED TO LURE UNION WITNESS FROM HOTEL

(By Walter Wright)

The FBI yesterday released sketches of two men who allegedly posed as FBI agents and tried to lure a key Carpenter's Union trial witness from his hotel room last month.

William Ervin, special agent in charge of the FBI's Honolulu office, said he hopes information from the general public will help identify the two men.

"Some people have already reported they may recognize these men," Ervin said. "We've had some help from other agencies, and we're continuing to investigate."

The Advertiser reported yesterday that the witness, Maui building contractor Walter Mungovan, 36, has been placed under federal protection and relocated because of fears he is in danger.

Mungovan's testimony was crucial to the May 23 conviction of Carpenter's Union business agents William O. Nishibayashi and Ralph Torres on perjury charges.

The union's financial secretary, Walter Kupau, yesterday was quoted in the Maui Sun as calling The Advertiser's disclosures about protection for Mungovan and the search for two suspects "yellow journalism" and "trash," full of insinuations and unnamed sources making wild accusations.

Mungovan made secret tape recordings of conversations with the two union business agents. The tapes were offered as proof that the men were lying when they denied trying to organize Mungovan's non-union company in 1980 and 1981.

The union officials each face up to 20 years in prison and fines of $8,000 at sentencing July 14.

The sketches released yesterday were made by a Honolulu Police Department artist. They were taken from an eye-witness description of two men said to have knocked at Mungovan's Hilton Hawaiian Village hotel room door at 1 p.m. on Friday May 13, a day the trial was in recess.

Ervin said the FBI provided the room for Mungovan in what the bureau believed was a secure situation. He declined to speculate on how outsiders may have learned the room's location.

The suspects were said to have identified themselves as FBI agents and asked that Mungovan come with them to review some documents in connection with the trial.

The FBI was called immediately, but the two suspects were gone by the time agents arrived.

Four days later, on Monday, May 17, Mungovan took the stand to testify that he made the recordings because "I felt a threat to my men, their families and my family."

One of the suspects was described as an Oriental man in his late 30's, about 5-foot-10, 200 pounds, pudgy build, black hair partly covering his ears and greased down. The other man was described as local, possibly Portuguese, 45 to 50, 5-foot-10, 180 pounds, with dark brown slightly graying hair.

Both were described as wearing aloha shirts at the time.

Union financial secretary Kupau, who is also head of the state AFL-CIO, has accused the FBI and Justice Department of harassing the union.

Kupau led a picket line outside the federal courthouse the day the jury filed in to deliberate on the fate of the two business agents.

The pickets' signs repeated Kupau's own charge that the trial was "racist," accused the FBI of "gestapo tactics," and said the prosecutor, Assistant U.S. Attorney Mark Bennett, should "go home."

Subsequently, Kupau revealed the union has asked the FBI, IRS and Treasury Department for information on investigations of the union's finances, personnel and tax matters.

The union also asked the agencies for information on the investigation of a mysterious April 4 fire which gutted a house being built by another non-union contractor in Hawaii Kai.

[From The Maui News, June 1, 1983]

PROTECTIVE CUSTODY FOR CONTRACTOR REPORTED

HONOLULU (UPI)—A Maui contractor who testified against two Carpenters Union officials in a recent trail has been placed in protective custody because he fears for his safety, the Honolulu Advertiser reported today.

Walter Mungovan was the key witness in the trial which resulted in perjury convictions against Maui union officials Ralph Torres and William Nishibayashi. Mungovan made tape recordings of conversations he had with the two men, who face possible 20-year prison terms when they are sentenced July 14.

The Advertiser reported that during the trial, Mungovan was visited at his Waikiki hotel room by two men in aloha shirts who were posing as FBI agents. The men—one Japanese and the other Caucasian—are being sought by police and the FBI. The two allegedly tried to get Mungovan to leave his room with them.

If they are found, they could face 10-year prison terms for obstruction of justice and three-year prison sentences for impersonating a federal officer.

Mungovan has entered the federal Witness Protection Program, in which witnesses believed to be in extreme danger are given new identities and relocated, the Advertiser reported.

Walter Kupau, leader of the Hawaii Carpenters Union Local 745, said this morning that he had "no comment" on today's Advertiser report.

Kupau said only that the newspaper report was an example of "yellow journalism" and "trash," full of insinuations and unnamed sources making wild accusations.

Kupau said no one knows whether Mungovan is really in protective custody.

But a source close to Mungovan told The Maui News today that reports about the protective custody "are quite accurate."

No one from the FBI, U.S. Attorney's office, or U.S. Marshall's office would neither confirm nor deny the story today about Mungovan's involvement in the federal witness protection program.

[From the Honolulu Advertiser, June 1, 1983]

CONTRACTOR PUT UNDER PROTECTION

(By Walter Wright)

Maui contractor Walter Mungovan, key witness in the federal perjury case against two Carpenters *Union* business agents last week, has been placed in protective custody because of fears for his safety. The Advertiser has learned.

And the FBI and local police are searching for two individuals who reportedly tried to contact Mungovan at his hotel room during the trial masquerading as FBI agents.

The two were described as a Japanese and a Caucasian, both dressed in aloha shirts. They were said to have attempted to get Mungovan to leave his room at the Hilton Hawaii Village on the pretext that they were FBI agents and had some documents they wanted him to review in connection with the trial.

Fliers containing sketches and descriptions of the two men were quietly circulated among police departments in Hawaii a week ago.

If identified, the two men could face charges of obstruction of justice, punishable by up to 10 years in prison and $250,000 in fines.

The law forbids any attempt to influence testimony or to retaliate for testimony already given.

And the two individuals who knocked on Mungovan's door might also be prosecuted for impersonating a federal officer, punishable by three years in prison and a fine of $1,000.

Mungovan's official "disappearance" into the federal Witness Protection Program underscores the seriousness of what appears to be a full-bore investigation of the Carpenter's Union by federal agencies here.

Mungovan, while waiting to testify at the trial, was overheard to say that his future plans depended on decisions to be made by the U.S. Marshall's Service.

The service operates the Witness Protection Program. In it, witnesses believed to be in extreme danger are given new identities and relocated.

Mungovan joked grimly about his circumstances. When one bystander innocently asked him how he was doing, the 6-foot 6 former 1st Air Cavalry paratrooper said: "Well, I'm still alive."

Knowledgeable sources said it was unlikely that protective custody would have been offered because of a single incident like the attempted hotel room contact.

The costly and difficult program is not undertaken lightly either by witnesses or by the government.

Federal authorities were believed to have already had information that Mungovan might be in danger.

The attempted contact at the hotel room apparently was regarded as another indication that earlier fears were justified.

The best-known previous participants in the federal Witness Protection Program from Hawaii are Roy R. Ryder, Sherwin K. "Sharky" Fellezs and George "Fat George" Ekita, all of whom testified against reputed syndicate boss Wilford "Nappy" Pulawa in the mid 1970s.

Mungovan's testimony during a nine-day trial was crucial in convicting Carpenters business agents William O. Nishibayashi and Ralph Torres of perjury charges last week.

Mungovan made secret tape recordings of conversations with the two men. The tapes were offered as proof that the men were lying when they denied trying to organize Mungovan's non-union company in 1980 and 1981.

Nishibayashi and Torres each faces up to 20 years in prison and a fine of $8,000 at sentencing July 14.

The union's financial secretary, Walter Kupau, has accused the FBI of harassing the union for over a year.

Kupau's charge is based in part on an investigation by the FBI. Treasury agents and the Honolulu Police Department of a mysterious fire that gutted a house being built by another non-union contractor in Hawaii Kai.

The job was being picketed by the Carpenters and other construction trade unions before and after 1:13 a.m. fire April 4.

The union has asked the federal agencies to turn over all records of that and other investigations of the union under the Freedom of Information Act.

The FBI says it doesn't have to release information about an active investigation or information that would identify any confidential informant, past or present.

[From the Maui News, May 24, 1983]

JURY FINDS TWO MAUI MEN GUILTY OF PERJURY

HONOLULU (UPI)—While union protesters marched outside the courtroom, a federal jury found Maui Carpenters Union business agents Ralph Torres and William Nishibayashi guilty of perjury Monday afternoon.

The jury found Nishibayashi guilty on all four counts, three counts of perjury and one count of making false statements to the National Labor Relations Board.

Torres was found innocent on two counts of perjury, but declared guilty of the other three perjury charges and of making false statements to the NLRB.

Attorneys for both men said they would appeal. Sentencing was set for July 14. They could receive up to 20 years in federal prison and fines of $8,000.

The two Maui men were convicted of lying in sworn statements about union picketing of C&W Construction on Maui in 1980 and 1981. Torres, 47, and Nishibayashi, 43, claimed during a 1981 trial that the picketing was being done only to inform the public that C&W's owner, Walter Mungovan, was paying substandard wages.

The government contended the picketing was being conducted to force Mungovan to sign a contract with the union. The trial's key evidence was a series of tapes made by Mungovan of conversations with the two union officials.

While deliberations continued Monday, about 50 pickets from various unions marched outside the courtroom, charging the government with union-busting and racial motives in the nine-day trial.

One of the picketers, Carpenters Union financial secretary Walter Kupau, said the trial was directed "against unionism and against local people."

Nishibayashi's attorney, Lloyd Asato, agreed the trial had racial overtones since it was directed against two local men instead of a Mainland haole.

Asato said Mungovan perjured himself in an affidavit, but was not charged.

"The U.S. Attorney's office has a lot of explaining to do to local people, unions and to the children of Torres and Nishibayashi," he said.

Torres' attorney, Roland Nip described the two defendants as "two little guys who got caught in the hash."

He said he wondered why the government would go to the trouble it did to prosecute the two union officials for what is not generally considered a major felony.

[From the Maui News, May 1983]

CONTRACTOR FEARFUL OF THREATS BY UNION MEN

HONOLULU (UPI)—C&W Construction owner Walter Mungovan of Maui testified Monday that he secretly recorded conversations with officials of the Carpenters' Union because he believed there was a threat to himself, his family, and his workers.

Mungovan's testimony came just before a Circuit Court jury heard portions of the tapes that Assistant U.S. Attorney Mark Bennett has said would form a "major part" of the government's perjury case against union business agents Ralph Torres and William Nishibayashi.

The defendants are accused of lying when, in sworn statements made in a 1981 court case, they denied making the statements which were recorded.

The case hinges on whether picketing of C&W by the union in 1980 and 1981 was for informational purposes to protest substandard wages, or to force Mungovan to sign a union contract.

Mungovan said he began making the tapes after Nishibayashi said another contractor's jobs would be "torched" if he refused to sign a union contract. He said he could not get Nishibayashi to repeat that threat on tape.

The tapes were played for the jury and visiting U.S. District Judge David Williams, and transcripts were admitted into evidence.

In the portions played in court, Nishibayashi appears to tell Mungovan that the union is signing up his non-union competitors, and that Mungovan can even identify those competitors and the union would then "shut them down" according to the transcript read by Bennett.

In a transcript of a conversation with Torres, the union official appears to confirm to Mungovan that if a union agreement is signed, the picketing would stop.

In another transcript, this one with Carpenters' Union president Walter Kupau, Kupau remarks that "some kind of agreement" must be consummated.

Defense attorneys contend Mungovan was the one who wanted to talk about signing a union agreement, and Torres and Nishibayashi did not mean an agreement was necessary for the removal of the pickets.

[From the Honolulu Advertiser, May 12, 1983]

FBI PROBING CARPENTERS, KUPAU SAYS

(By Walter Wright)

The FBI is pressing a major investigation of Hawaii's 4,000-member Carpenters union, fireworks after a federal court session yesterday revealed.

The union's financial secretary, Walter H. Kupau, stepped off the witness stand and accused the FBI of harassing the union as part of a drive by the Reagan administration to "bust militant local unions."

Assistant U.S. Attorney Mark Everett rejected the charge as "nonsense," denying FBI harassment or any political considerations.

Kupau, who is also head of the state AFL-CIO, was called to testify yesterday during the trial of two of his Maui Carpenters' business agents on charges of perjury relating to picketing of a non-union Maui contractor in 1981.

Another man, concrete company dispatcher, Dennis Yoshida, was sentenced to six months in prison last month for lying when he denied telling the contractor no one from the union advised him to stop delivering concrete to his jobs.

Now, union business agents William "Billy" Nishibayashi and Frank Torres are on trial on charges they lied about their dealings with the same contractor.

The guts of the case, to be offered by the government this morning, are secret tape recordings made in 1981 by the Maui contractor, Walter Mungovan, head of the small C & W Construction Co.

Mungovan says he used a little Pearl recorder to tape a meeting with Nishibayashi and telephone conversations with Torres, Yoshida and Kupau.

Kupau yesterday acknowledged on the witness stand that he told Mungovan in a taped telephone conversation that the union would remove its informational picket lines if Mungovan reached "some type of agreement" with the union.

Kupau denied on the stand that the "agreement" he was talking about was a union contract. That would be a violation of the National Labor Relations Act, which forbids using an informational picket line to get a contract signed.

But Kupau also acknowledged telling Mungovan in the same conversation that "we are not worried about the National Labor Relations Board because we think we got 'em pretty well, you know, I'm always fighting with (NLRB Regional Director) Dennis MacCarthy and sometimes I don't talk to 'em for two months."

Kupau said in an interview later that he was referring to MacCarthy botching an NLRB petition for an injunction against the union in the Mungovan case by omitting the contractor's sworn statements.

But, advised that the telephone conversation with Mungovan took place before MacCarthy sought the injunction, Kupau said he meant only that MacCarthy was a mediator and that he knew how to handle him.

MacCarthy, who retired from the job in February, said last night that Kupau was "100 percent wrong" to suggest the NLRB was under Kupau's control. MacCarthy said that although he personally considers Kupau to be "very fair and above-board," Kupau is also "capable of causing a lot of trouble. I've had to hit him heavy at times. Find out how many times he's been clobbered."

Regarding his handling of the Mungovan petition, MacCarthy said he was "blown right out by my own person."

Former NLRB lawyer Randall Harakal admitted in court earlier he dropped the ball by not making sure the required affidavits were in the petition, but added that MacCarthy dropped the ball again when it was tossed to him.

FBI harassment, Kupau said yesterday, has been going on for a year.

Kupau said five FBI agents rushed into the local headquarters last week seeking information, that others had called on a business agent at 6 a.m., pulled another business agent over to the side of the road and questioned him while en route to the airport recently and had asked one union worker's wife about lie-detector tests.

Assistant U.S. Attorney Mark Everett, who is prosecuting the perjury case against Torres and Nishibayashi, rejected Kupau's charges late yesterday.

"I have absolutely no knowledge of the FBI harassing anyone. To my knowledge, what the FBI is doing regarding the carpenter's union is that no way is anyone being harassed.

"Mr. Kupau's suggestion that there are political considerations involved is nonsense. We do our job and follow the law, and it doesn't matter whose administration it is."

John Howard, assistant special agent in charge of the FBI's Honolulu office, said he would stand by what Everett said and make no other comment.

Kupau also charged that the FBI "turned around and began investigating us" after the union took information about Mungovan to the FBI. Kupau said the union went to the FBI because he thought at first Mungovan's secret tape recordings of his telephone conversation were illegal and also because of reports that Mungovan was carrying a gun.

Kapau's remark about the gun was the second suggestion that the threat of violence might figure in the case.

Assistant U.S. Attorney Everett, in his opening argument in the case earlier this week, said that Nishibayashi had told Mungovan that if another nonunion contractor didn't sign up, "we'll torch his jobs."

It was at that point, Everett said, that Mungovan decided to tape all conversations with any of the union representatives or others involved.

In earlier civil proceedings against the union, Mungovan submitted transcripts of a conversation in which he claims Torres told him "every —— picket in Kula" would be pulled off if Mungovan signed.

Kupau testified yesterday that the pickets would have been pulled if Mungovan merely agreed to pay the equivalent of union wages and benefits, even if he didn't sign a contract. If such wages were being paid, he said, there would be no need for informational picketing accusing the employer of substandard wages.

Mungovan also said he taped concrete company dispatcher Yoshida saying it was Torres who told Yoshida he couldn't deliver concrete to a job Mungovan had worked on.

The government says that Yosida, Torres and Nishibayashi later perjured themselves in affidavits they filed when the union fought the NLRB's request for an injunction.

Yoshida himself testified yesterday it was Torres who told him not to deliver concrete to a Mungovan job, and said the union often let him know before delivery that there were pickets on the job. Yoshida also said he later told Torres that Torres has never told him not to cross a picket line. But he explained he meant Torres hadn't threatened him about it.

Steven Suyat, the union's third business agent on Maui, confirmed his log book showed entries referring to contacts with C & W employees about joining up.

He said pickets were pulled from another job after Nishibayashi said the company was going to sign a contract, but denied that the purpose of the picketing of that firm or C & W was to get a contract signed.

His log book, Suyat agreed, said he and Torres went to C & W "to picket to stay because they need someone to grout the tile walls."

But picketing was not intended to prevent deliveries or workers from crossing the line, Suyat said. It was only to inform the public of substandard wages, he said.

He said he never heard Torres ask Mungovan to sign a union contract.

Earlier in the trial being heard before visiting U.S. District Judge David Williams of Los Angeles:

NLRB lawyer Thomas Cestare told the jury informational picketing can continue "forever" as long as it is not used as an organizing tool Organizational picketing, however, must be limited to 30 days, he said. The law also bans a secondary boycott, Cestare said, such as picketing or threatening to picket a second company because it is doing business with the employer in the dispute.

Roger Wayne Davidson, formerly manager of Ameron HC&D's Maui concrete operations, testified that Torres complained an Ameron truck had crossed an informational picket line, and that an Ameron truck driver later decided not to cross the line after Torres talked to Ameron's union representative.

Former swimming pool contractor Charles Albright testified that a driver refused to deliver concrete to his pool job on a site where Mungovan had completed a house, after Torres picketing, spoke to the driver.

Former union attorney Dennis W. S. Chang testified he drew up affidavits for the business agents based on what they told him, then gave the papers to the men for them to read and sign. He acknowledged he didn't use their own exact words.

Union clerical worker Linda Watanabe said she notarized the affidavits and considered that the men had given their oaths that they were true when they signed them. Defense attorneys brought out that the business agents didn't raise their hands and actually swear aloud that what they were signing was true.

[From the Honolulu Advertiser, May 17, 1983]

CONTRACTOR: TAPED UNION "THREATS"

(By Walter Wright)

Maui building contractor Walter Mungovan testified yesterday he made secret tape recordings of Carpenters' Union officials in 1981 because "I felt a threat to my men, their families and my family."

"I had to get something on tape. Everybody around me was lying and carrying signs that lied.

"One guy, when he has to stand up for his rights, has to do something," the 36-year-old contractor said.

He made the tapes, he said, "to cover myself and my family and my men, so someday somebody would know the truth, because of the threats and the lies."

Mungovan, testifying in the perjury trial of union business agents Ralph Torres and William O. Nishibayashi, said he started making the tapes after Nishibayashi said another contractor's jobs would be "torched" if the other contractor didn't sign a union contract.

But Mungovan acknowledged he failed to lure Nishibayashi into repeating that threat while Nishibayashi was being recorded in a later conversation.

The jury heard that tape, another purported to be of a talk with Torres, and a third of a telephone call to the top man in the union, financial secretary Walter Kupau.

The Nishibayashi and Torres tapes, while hard to understand, made clear the conversations dealt with Mungovan signing an agreement with the union.

But defense attorneys said they will prove that it was Mungovan who wanted to talk about signing an agreement, and that the agents were not demanding the agreement as the price for removing their "informational" picketing.

The business agents are charged with perjury because of their sworn statements that their only goal in picketing and talking to Mungovan was to protest substandard wages, not to organize in Mungovan's company, C&W Construction.

Use of an "informational" picket line for organizing purposes is a violation of the National Labor Relations Act.

Transcripts of the tapes, as well as the tapes themselves, were admitted into evidence, and were reviewed by the jury.

But visiting U.S. District Judge David Williams would not allow the press to see the transcripts yesterday unless both the government and the defense agreed.

That gave defense attorneys Roland Nip and Lloyd Y. Asato a way to keep the transcripts from the public during the trial, and they used it. Nip said he would object to the press seeing the transcripts because of previous "inaccuracies" in Advertiser stories about the trial, and because the transcripts could cause a public furor and result in pressure on jurors.

In the Feb. 3, 1981, conversation in a noisy Kahului restaurant, Nishibayashi appears to assure Mungovan that the union is signing up other non-union contractors that he is competing against and even offers to go out and sign up any such competitors Mungovan names after Mungovan signs.

"We cannot get every guy at one time," Nishibayashi says.

"I tell you something, Walter," Nishibayashi says, " . . . certainly we'll reach some kind of agreement, and we come see you" and Mungovan could then tell the union who his non-union competitors were.

Then, according to a portion of the transcript read into the record by Assistant U.S. Attorney Mark Bennett, Nishibayashi says, "we'll go shut em down."

Mungovan said he felt Nishibayashi meant that other contractors would be hit with informational picket lines which would stop deliveries.

At one point, when Mungovan complains that the situation is costing him a lot of money, Nishibayashi appears to say it is "gonna cost you a helluva lot more."

When Mungovan says. "You not going to burn me down," Nishibayashi appears to say: "No, where you get that idea?"

But Mungovan said he was not surpised at that remark, "not the way he said it."

Assistant U.S. Attorney Bennett read from the transcript a statement by Nishibayashi that he "wants to get together with (Mungovan) before he (Kupau) attacks."

That meant, Mungovan said, that Kupau "was going to start getting perhaps more violent" and file "more legal actions."

At another point, Mungovan said, Nishibayashi was talking about the threat that Kupau "was going to attack, tie me up in court and ruin my business."

Another reading from Bennett brought Mungovan's testimony that Nishibayashi had indicated that the union was "keeping watch" and had gotten other contractors to sign up without first hitting them with informational picketing.

The taped conversations with Torres and Kupau on different occasions were earlier transcribed in Mungovan's civil court fight with the union. The earlier transcripts are not identical to those seen by the jury, partial references to them in court indicate.

Mungovan testified that Torres came to him with a copy of the union contract on Jan. 15, 1981. The earlier transcript of the conversation has Torres saying that if Mungovan puts down the projects he has or is negotiating for, "then we cannot touch the ——— jobs. That's inside information, brah."

Mungovan says: "Okay, the whole deal is that if I sign this, then you guys pull the pickets and not bother me no more."

Torres, according to the earlier transcript, reples: "Right . . . right, every ——— picket in Kula."

When Mungovan suggests Torres is just "trying to do your job and organize me." Torres responds, "Right, that's all. Not organize you. I don't know what you call 'em, but we're trying to do our job."

In a telephone conversation with Kupau, the clearest of the tapes. Kupau says, according to the earlier transcript, "in order to settle this whole beef, the picket lines off, both sides withdraw (apparently from an NLRB dispute) . . . in order to settle the beef is going to have to be some type of agreement consummated and effective at some future date on all new projects prior to you negotiating or bidding on them."

Mungovan later testified he complained of terroristic threatening by union personnel in relation to a dispute over whether one of his trucks hit Torres on a picket line.

When he said he didn't think Torres was hit, Mungovan was asked if he had seen Torres walking about later with a cane. "Yes, I did, and some other people saw him climbing a 12-story building with a cane." Mungovan said.

[From the Honolulu Advertiser, May 18, 1983]

TORRES NO UNION ORGANIZER, COURT TOLD—JUST A MAN WHO BELIEVES IN SOLIDARITY

(By Charles Turner and Walter Wright)

Carpenter's Union business agent Ralph Torres, on trial on six criminal counts of perjury involving picketing of a Maui contractor, is a "simple man," new to his job, whose worst crime was believing in solidarity as a union member, his defense attorney told a Federal court jury yesterday.

"Ralph Torres in no way was deliberately trying to tell anybody a lie," said defense attorney Robert Nip in his opening argument.

It was Torres' boss and co-defendant, head Maui Carpenters' business agent William O. Nishibayashi, who told Torres that contractor Walter Mungovan was not giving his workers union wages and benefits, Nip said.

He said Torres became a union business agent in 1980, shortly before the picketing began on Mungovan's jobs.

The government says Mungovan's testimony and secret tape recordings prove Torres and Nishibayashi were using an "informational" picket line in an effort to organize Mungovan's company, and that the two lied when they later denied that in sworn statements.

A transcript touching that issue was released yesterday by visiting U.S. District Judge David Williams of Los Angeles, at the request of The Advertiser.

The transcript was admitted into evidence and read by the jury as a guide to what may have been said. It offered a line-by-line version of a taped conversation that was difficult to understand when played in court Monday.

In it, Nishibayashi says that "Ralph," apparently referring to Torres, was "added . . . strictly for organizing labor . . . just for the purpose of organizing."

Torres earlier denied that he was hired for organizing work.

Use of an "informational" picket line for organizing is illegal, because such a picket can continue indefinitely.

On the December 1980 tape, Nishibayashi suggests Mungovan accept "the offer I give in to." Mungovan complains that the offer doesn't allow him any time.

Nishibayashi says that "after today it's out of my hands." He warns that if Mungovan tries to have his workers vote on joining the union on their own, "always remember they have appeal," and can "block everything."

Nishibayashi says Mungovan told everyone at the picket line "you were coming in today and gonna sign today."

FBI Agent Ray Hamilton was called to confirm entries in the log books of the business agents and their colleague, Steven Suyat, dealing with contractors signing up and deliveries and workers crossing or not crossing picket lines.

At one point, Suyat apparently wrote that Nishibayashi instructed Suyat and Torres to sign up a contractor. The entry referred to dropping of charges if the contractor signed, and included the warning that "make sure he doesn't have a tape on him because he could blackmail us."

In cross-examination yesterday, Mungovan said he reported every threat he received from the union to Maui police but "they wouldn't do anything about it, and when they found out I had a tape recorder, an officer . . . went to Mr. Torres and said, 'Don't say anything more to Mr. Mungovan, he's got a tape.' "

One of Mungovan's former employees, mason William MacCaughran of Los Angeles, said Torres called him a "——— haole scab."

He recalled three instances in which Torres spoke to truck drivers who refused to cross Torres' picket line.

Maui Block truck driver Geoffrey Cravalho testified that Torres told him "I would have to observe the picket line because I was a member of the ILWU" and that "If I didn't, he would tell other union contractors not to buy blocks from Maui Block."

The defense called concrete truck driver William J. Boteilho, who said he decided on his own not to cross the picket line because "I'm a union member and I respect the next man's union."

Carpenter Randy Carter testified that he worked the Mungovan picket line for two weeks and never saw Torres threaten anyone or call anyone a scab.

Maui Electric workers Ernest Mathias and Charles Uwekoolani testified that they worked on a Mungovan job without any interference from carpenter pickets.

Judge William yesterday denied a motion for acquittal based on the question of whether the defendants actually took an oath in making their statements.

The judge reserved ruling on the issue of how much corroboration is needed to prove a perjury charge.

[From the Honolulu Advertiser, May 20, 1983]

DIDN'T LIE, TWO CARPENTER UNIONISTS TESTIFY

(By Walter Wright)

Two Carpenter's Union business agents accused of perjury wound up their defense in federal court yesterday denying they lied about their purpose in picketing a Maui contractor in 1981. After closing arguments today, the case will go to the jury for deliberations staring Monday.

William O. "Billy" Nishibayashi, head of the union's Maui office, denied that the union was trying to get contractor Walter Mungovan to sign an agreement when it sent "informational" pickets to his jobs.

On cross-examination, Nishibayashi admitted he told Mungovan that if he signed up, the union would then go out to his non-union competitors and "shut them down." It was, Nishibayashi said later, "just a phrase we use all the time in the office, just that hopefully we can shut a job down, but that's only our inner feeling."

Ralph Torres, whom Nishibayashi said he hired to help in union organizing efforts, denied he tried to keep workers or materials from crossing the picket line at Mungovan's jobs.

Could he force others not to cross the line, Torres was asked. "Nah, no can. We have no jurisdiction over them. If they feel they don't want to cross, 'hey, thank you, braddah;' if they cross the line, I feel bad."

The picketing was only to protest substandard wages, Torres insisted. If some truck drivers decided not to cross the informational picket line, he said, that was their choice.

Mungovan's brother-in-law, Stewart Norrie, testified Torres yelled at him; "You been too long in Hawaii, brah. I'm going to bring my boys down and get you."

Torres admitted telling Norrie: "Hey. you ———. I'm going to get you."

But Torres said Norrie had just slammed directly into him with a loaded pickup truck going 20 mph. Norrie said the truck was going 5 mph. and never touched Torres.

Torres' doctor, Michael McDonald, said he diagnosed muscle and ligament strain and possible disc injury, as well as sprain of right hip and knee based primarily on Torres's own reports of pain and restricted movement. He said he found no swelling, break or cut, but a slight curvature of the spine consistent with muscle spasm.

The government brought out that Torres has claimed he was hit by a backhoe while picketing another job about six weeks later, and by a truck on another picket line.

Defense witness John Swain testified he fired Mungovan from a job, settling the cost-plus contract for $25,000 "just to get rid of him" after he concluded Mungovan was billing him for wages higher than were paid his men.

Mungovan said he explained wages and fringe benefit costs completely to Swain and thought that Swain was trying to "chisel" him. The contractor said he was fired mainly "because this man (Swain) felt the International Brotherhood of Carpenters were going to torch his job and were impeding progress, and also because he could do the job cheaper by being an owner builder."

Torres acknowledged he brought Mungovan copy of the union contract at Mungovan's request, and that he discussed how Mungovan could get some jobs he had already bid exempt from the contract if he signed.

Nishbayashi had a similar conversation with Mungovan, also tape recorded secretly by contractor.

But, the business agents insisted, it was Mungovan who wanted to sign, not the ——— asking him to.

Torres did testify that "I told him you sign ——— contract we going lift the picket." But Torres said that was only because Mungovan was then no longer be paying the substandard ——— being protested.

[From the Honolulu Advertiser, May 24, 1983]

Two Union Agents Guilty of Perjury in "Sign-Up" Case

(By Walter Wright)

Two Carpenters' Union business agents yesterday were found guilty of lying about their efforts to sign up a Maui building contractor in 1981.

William O. Nishibayashi, 43, and Ralph Torres, 47, both face up to 20 years in federal prison and fines of $8,000 at sentencing July 14. Their attorneys said they would appeal.

The verdict came after union financial secretary Walter Kupau led about 50 pickets in front of the courthouse. They carried signs calling it a "racist trial" and saying assistant U.S. attorney Mark Bennett, who prosecuted the case, should "go back home."

Bennett said the union could exercise its First Amendment right of free speech in front of the courthouse any time it wants. "But," he added, "Hawaii is my home, and I'm staying."

The FBI has declined comment on Kupau's earlier charge that the union is the target of a continuing investigation.

Defense attorney Lloyd Asato said "only local people get persecuted" in Hawaii, and that the attitudes of "the chief luna in the White House" pervaded the case.

Asato said the government's key witness, contractor Walter Mungovan, lied about how many men and jobs he had, about the day he received a letter, and in describing a confrontation at a picket line.

But, Asato said, the government prosecuted two "local men" rather than Mungovan, "an articulate haole from Boston."

Bennett responded that Asato said the same thing before the jury, "but the jury found beyond a reasonable doubt that what Mr. Asato was saying was not so."

The jury included three non-Caucasians, and a unanimous vote was required to convict. The jury deliberated about five hours at the end of a nine-day trial before finding Torres, said after the verdict that "the little man gets trampled on again."

He said Torres, a high school drop-out was confronted with lawyers pushing papers at him, didn't know he was under oath when he signed them and got caught in a battle between the union and the National Labor Relations Board.

Torres testified he knew he would get in trouble if he lied in the written statements.

The trial was over whether the two men lied in sworn affidavits in a dispute with Mungovan before the NLRB.

Mungovan accused them of using informational picketing and secondary boycotts illegally to get him to sign with Hawaii Local 745.

Mungovan, who secretly recorded conversations with the business agents and with Kupau, said the union tried to shut him down by blocking deliveries and workers.

He said Nishibayashi, in a conversation which was not recorded, talked about "torching" a job of another non-union contractor if he didn't sign.

Specifically, the business agents were convicted of lying when they said the union's only objectives were to protest substandard wages and to have Mungovan pay prevailing wages.

Nishibayashi also was convicted for falsely denying he summoned Mungovan to talk about signing an agreement.

And Torres was convicted for saying nobody tried to stop anyone from working on Mungovan's jobs.

The jury acquitted Torres of two other counts involving his denial that he asked Mungovan to sign.

Another jury 10 weeks ago convicted Dennis Yoshida, a concrete company dispatcher, for denying under oath that the union told him not to deliver to Mungovan. Yoshida was sentenced to six months in prison.

[From the Honolulu Star-Bulletin, May 24, 1983]

TWO UNION LEADERS FOUND GUILTY OF PERJURY CHARGES

(By Charles Memminger)

A federal court jury yesterday found two Maui union officials guilty of pejury in connection with a 1980 labor dispute.

Ralph Torres and William Nishibayashi, business agents for the Carpenters Union, were convicted of four counts each of perjury after the jury deliberated for a day.

Visiting Judge David Williams, who presided over the nine-day trial, set July 14 for sentencing. The men face a maximum 20 years in prison.

Nishibayashi, 43, and Torres, 47, can remain free on signature bonds until the sentencing, the judge said. Neither has a previous criminal record.

The verdict drew angry responses from the men's attorneys, one of whom charged that the trial had been racially motivated.

"Federal laws in Hawaii apply only to locals, not Mainland haoles," said attorney Lloyd Asato, who represented Nishibayashi. He charged that Walter Mungovan, the owner of a construction company that had been the target of union pickets in 1980, also had perjured himself in affidavits filed with the National Labor Relations Board.

About 50 members of various unions, including the Carpenters Union, picketed outside the federal courthouse yesterday morning, also charging that the trial was racially motivated. Walter Kupau, financial secretary of the Carpenters Union, said the trial was directed "against unionism and against local people."

The trial centered on the 1980 picketing of C&W Construction, a company owned by Mungovan.

Nishibayashi and Torres were convicted of lying in affidavits they signed in March 1981. In the affidavits, they outlined what they had told Mungovan about the purpose of picketing at his company.

The union men claimed they had set up an "informational picket" to protest substandard wages being paid at C&W. The government contended the picket was an effort to force Mungovan to sign a union contract, which would be a violation of federal labor laws.

In November 1982, Torres, Nishibayashi and Dennis Yoshida, a dispatcher for a Maui concrete company, were indicted on charges that they lied in affidavits they signed concerning the labor dispute.

Yoshida was convicted in a trial earlier this year.

Attorney Robert Nip, who along with his brother, Roland respresented Torres, said the verdict will be appealed.

Outside the courthouse, the two attorneys continued to contend that Torres did not know that he was signing a sworn affidavit. They said the statement Torres signed to be used in a NLRB investigtion, was prepared by a union attorney and that Torres unwittingly signed the document.

Roland Nip described Torres as a "Maui boy with a 10th-grade education" who got caught in the middle of the beef between the union and Mungovan.

Asato said Mungovan also had filed affidavits that contained, "discrepancies" that could have led to a grand jury indictment had the U.S. attorney's office pursued it.

"The U.S. attorney's office has a lot of explaining to do to the local people, unions, and to the children of Torres and Nishibayashi," he said.

He said the trial was the result of the government's "plantation mentality" directed against locals who are members of unions.

[From the Honolulu Advertiser, May 25, 1983]

U.S. PROBING HAWAII KAI HOUSE BLAZE

(By Walter Wright)

The FBI, Treasury agents and Honolulu police are investigating a fire that did an estimated $70,000 damage to a Hawaii Kai house built by a non-union contractor being picketed by the Carpenters' Union and others.

The union believes it is under investigation in connection with the fire, and has asked federal agencies to disclose all information about that and other investigations of the union.

A federal court jury Monday convicted two of the union's Maui business agents of perjury. During the nine-day trial, another non-union contractor accused one of the business agents of threatening to "torch" a non-union job on Maui in 1980. The accusation has never been proven.

William Ervin, special agent in charge of the FBI here, yesterday confirmed that the FBI is assisting the Treasury Department's Alcohol, Tobacco and Firearms (ATF) Bureau in an investigation of the Mariner's Ridge fire.

"We are interested in any information anyone has about the origin of that fire," said Ervin, "and any information we receive will be treated in confidence."

But Ervin declined comment when asked if the Carpenter's Union was involved.

Walter Kupau, the union's financial secretary, yesterday released copies of letters to the FBI and others requesting information about the probe. He said the letters show the union is following up on the charges of FBI harassment it made during the trial.

Kupau would not comment on specific items in the letters.

The fire was reported at 1:13 a.m. April 4, the morning after Easter Sunday, after an explosion was heard and flames seen at the house on 1090 Kaluanui Road.

The house was being built by the non-union Town and Country Development Co., Inc. The company president, Jesse Spencer, was mentioned last week during the trial of Maui Carpenter's Union business agents William O. Nishibayashi and Ralph Torres, and Spencer was prepared to testify for the government in that case.

Nishibayashi and Torres were convicted of lying about the union's purpose in picketing construction projects by non-union Maui building contractor Walter Mungovan.

Mungovan testified that Nishibayashi told him in 1980 that another non-union contractor's job on Maui would be "torched" if the other man didn't sign up with the union.

But the arson threat allegation was not one of those specifically at issue in the perjury case, and Mungovan admitted he was unable to lure Nishibayashi into making the statement on another occasion while Mungovan was making a secret tape recording.

Torres claimed during the trial that one of Mungovan's employees ran into him with a truck. On cross-examination, the government brought out that Torres made similar claims about being hit by a truck on a Spencer job. Spencer was prepared to testify the truck didn't hit Torres.

Joanne Kocher, special agent in charge of the ATF in Honolulu, confirmed that agency is looking into the possibility the fire was arson.

The FBI would have jurisdiction if the fire was connected with extortion or racketeering.

Honolulu Police Detective Earl Hoke said the way the fire spread indicated it was started with an "accelerant" or flammable fluid. He said laboratory tests to pin down what may have been used have not been completed.

Spencer was out of town yesterday and could not be reached for comment.

But the attorney for the company, Spencer's son, Douglas R. Spencer, said the company has had trouble with the Carpenters' Union and other building trade unions for years.

Douglas Spencer said the company began several homes on Mariner's Ridge at the end of January, and picketing began within three or four weeks.

One of the issues in the recent trial, and a perennial one in labor disputes, is whether the picketing was "informational" or "organizational."

"Informational" picketing can continue indefinitely, while picketing to organize a company is limited to 30 days. It is illegal to use "informational" picketing as an organizing tool.

Douglas Spencer said the picketing blocked the road in some instances until police were called, and pickets continued to talk to delivery truck drivers before they could reach the job site.

He said some trades refused to cross the line, slowing work on the project.

The picketing, billed as "informational," continued for about a month after the April 4 fire, Douglas Spencer said.

He said federal investigators began working on the case within a few days of the fire.

The union yesterday released copies of letters addressed to the FBI, IRS and ATF asking for disclosures of information under the Freedom of Information Act.

The letter said the union believes the agencies have collected information about several matters, including "investigation of the alleged fire which occurred at Mariner's Ridge subdivision, Honolulu, Hawaii.

The union also asked for information relating to FBI and ATF interviews with union officials during the week of April 18, and for information about the union's labor practices, finances and taxes.

[From the Honolulu Advertiser, June 3, 1983]

KUPAU SEES PLOT AGAINST UNION

(By Charles Turner)

Carpenters union leader Walter Kupau yesterday accused the FBI, U.S. Attorney and The Advertiser of trying to implicate his union in "organized crime" in Hawaii.

The FBI and the U.S. Attorney's office declined comment, and The Advertiser said it was "simply covering the news."

Kupau offered to take a lie detector test to prove he knows nothing about an alleged attempt by two men posing as FBI agents to contact a key witness during the trial of two Kupau-appointed business agents.

He also challenged the witness, FBI agents, the U.S. Attorney and an Advertiser reporter to take a similar lie detector test "and really see who is telling the truth."

The witness, Maui Contractor Walter Mungovan, 36, has been placed under federal protection and relocated because of fears for his safety. The Advertiser disclosed in a story published Wednesday.

Mungovan was a key witness in the federal perjury trial of Carpenters business agents William O. Nishibayashi and Ralph Torres. A jury convicted the two men on eight counts, for which each faces up to 20 years in prison at sentencing July 14.

Kupau called a press conference to criticize the story about Mungovan, along with others written by Advertiser Staff Writer Walter Wright, as part of an effort to tie the Carpenters union "into various activities and associations which are totally unfounded."

Kupau claimed the FBI and the U.S. Attorney's office, as part of the Reagan administration, were involved in "Gestapo tactics" aimed at discrediting the labor movement.

"I fear not only for my family, my friends and my brothers and sisters in the labor movement but also for all the people of the state of Hawaii," he said.

Kupau accused The Advertiser of being part of a "conspiracy" in stories which ran during and after the trial of the two business agents.

He displayed a copy of the May 25 story headlined: "U.S. probing Hawaii Kai house blaze" and complained about a nonrelated photo which showed fireworks exploding over the Brooklyn Bridge on its 100th anniversary.

He said it was not "coincidence" that the photo was placed next to the story.

Kupau also complained about other stories dealing with the trial and subsequent events and said they were "malicious attempts by the U.S. Attorney's office and Wright to link the Carpenters union up with organized crime.

It was Kupau himself who revealed details of the FBI's investigation of the union in an interview with Wright. And it was the union which hand-delivered to The Advertiser a letter asking about the federal probe of an April 4 fire which gutted a non-union contractor's house project in Hawaii Kai.

Wright said Kupau's charges were "zany."

The Advertiser's editor in chief, George Chaplin, said in response to the union leader's statements:

"In his anger over recent developments, Walter Kupau is engaging in unwarranted interpretations of Advertiser news stories.

"We are simply carrying out our responsibilities in covering the news, in court and out.

"Mr. Kupau has known this newspaper for many years and he knows we are fair."

[From the Honolulu Advertiser, July 15, 1983]

MORE CONTRACTORS TELL OF THREATS

(By Walter Wright)

The virtual destruction of one Maui building contractor's business and family life by two Carpenters Union business agents was part of a broader and continuing "master plan," according to the U.S. attorney's office.

But attorneys for the business agents yesterday denied the charge and said the government's "extremely unfair" allegations should be disregarded.

In a sentencing memorandum filed with the federal court. Assistant U.S. Attorney Mark Bennett asked that U.S. District Judge David Williams impose substantial prison sentences today on business agents Ralph Torres and William O. Nishibayashi.

Torres and Nishibayashi were convicted by a jury May 21 of lying about their efforts to sign up contractor Walter Mungovan in 1981.

They each face up to 20 years in prison and fines of up to $8,000 when they are sentenced today.

Bennett gave the court affidavits from eight other non-union contractors on Maui, most of whom also said they were threatened or coerced by Torres or Nishibayashi.

The affidavits from the other contractors, Bennett said, prove the actions of Torres and Nishibayashi toward Mungovan "were not isolated incidents but rather were part of a master plan . . . that appears to continue to this very day."

Robert Nip, one of the attorneys for Torres, said yesterday that Bennett's memorandum "attempts to attack the character and reputation of the defendants by virtue of pure hearsay rather than in a trial where all the evidence could be brought to bear on the evidence."

The "master plan" charge, Nip said, shows "the government is jumping to conclusions (and) mobilizing its vast resources against what it considers illegal union activity."

"I don't think they should be aiming at two small potatoes to be the scrapegoats for the whole thing," Nip said. "It's prosecution by innuendo and trial by newspaper."

In the affidavits filed with the court:

Contractor Richard Andrade said that in January, Torres came to his job site, blocked his equipment, made threatening gestures and told him and his wife that "I'm going to get the son of a bitch."

Contractor Lee Muller said in September 1982 Torres called him a "——— haole" and said: "We're going to get you. You've had it. You are a marked man." Muller said he twice said he was going to pour concrete on non-union jobs after Torres suggested he shouldn't.

Contractor Gary C. Fuller said Torres and Nishibayashi told him in September 1980, when he said he would no longer operate a union shop, that "we'll get you." Once he agreed to sign a contract again, Fuller said, so-called "informational" pickets were pulled from his job.

Contractor C. Earl Stoner said that after he started a project in 1981, Torres said "bad things" would happen if Stoner hired a subcontractor who was apparently having problems with the union.

Contractor Jesse Spencer said that in 1982, Torres lunged into his truck on a job site and claimed Spencer had run into him. Torres made a similar allegation against one of Mungovan's employees.

Spencer said Torres and other pickets normally tried to block access to job sites.

Spencer is the contractor who lost a Hawaii Kai house to a mysterious fire earlier this year while being picketed by Carpenters and other unions.

Contractor Estilito Benjamin Castillon Jr. said that in May, Torres harassed him and other employees on a job site across the street from the Maui union hall in Wailuku. Castillon said 150 carpenters, led by Torres and union financial secretary Walter Kupau, were at the hall. Castillon said he and other employees left the job after the carpenters began to throw rocks and bottles against a buiding on the site.

Contractor Alfredo Bulusan said that Nishibayashi in 1982 repeatedly asked him to sigh a union contract, that he was picketed when he refused, and that Nishibayashi said his problems with the union would be settled if he signed.

Contractor Victor Sinenci said the union put up an informational picket line in 1982 after he refused Nishibayashi's request that he sign a contract.

FBI agent Ray Hamilton said Michael Klink, son and emplyee of a non-union contractor, told him Torres claimed that Klink struck him with a tractor on a job site Torres was picketing.

"Later, as I attempted to leave the job site," Klink said, "a large black car drove by very slowly. Torres pointed me out to the driver and said: 'This is the guy.' Torres then said I was going to be 'blown away.' When I confronted Torres, he asid 'it might not happen today, not tomorrow, but you'll find out.'"

Bennett also gave the court a copy of a letter from Mungovan's wife, Cher, in which she described the impact of "harassment and threats" by the union.

Mrs. Mungovan confirmed that, as first reported in The Advertiser in May, her husband has been placed in the federal witness-protection program and relocated under a new identity because of fear for his life.

[From the Honolulu Advertiser, July 16, 1983]

Two Union Aides Sentenced to 6 Months for Perjury

(By Walter Wright)

Two Carpenters union business agents were sentenced to six months in federal prison and $1,000 fines yesterday for lying about their efforts to sign up a non-union Maui contractor in 1981.

At the same time, lawyers for the contractor, Walter Mungovan, served both business agents with a civil antitrust and racketeering lawsuit seeking triple damages for injury to Mungovan's business and his personal life.

William O. Nishibayashi, 43, and Ralph Torres, 47, faced as much as 20 years in prison and fines of $8,000 after each was convicted May 21 on four counts of perjury.

The government asked for substantial prison terms and submitted affidavits from eight other contractors who said the business agents also coerced or threatened them.

But visiting U.S. District Court Judge David Williams, who presided over the two-week trial, said the government was "clearly out of order" in presenting the additional information and said he had no intention of considering it in passing sentence.

Williams indicated he agreed with defense attorneys that the men were tried and convicted for perjury alone and not for other allegations during and after the trial of violence and threats.

[From the Honolulu Advertiser, July 25, 1983]

THE TRIALS FOR VIET VET, WIFE JUST BEGINNING

(By Walter Wright)

Cher Mungovan can't get over the irony of it. It hit her especially when she went to Washington and saw the memorial to the Vietnam war dead.

"My husband's name should be there. He's gone now, too, almost as much as they are."

Walter Mungovan, 6 feet, 7 inches tall, First Air Cavalry, special weapons training, went into the jungles of Vietnam in 1965 and came out a year later without a scratch and covered with medals.

In 1979, Walter and Cher Mungovan set up a non-union homebuilding business on Maui, and resisted efforts by the Carpenters union to organize the company.

"This is America," Cher told her husband when he said the union wanted to organize him. "No one can force you to sign."

It was America, but Mungovan would say later, it became worse than Vietnam. "In Vietnam, everyone was your enemy. Here, you don't know who it is. And I didn't come home from Vietnam to get killed and dumped in some Maui canefield without knowing who did it."

After the FBI said his life was in danger, Mungovan installed surveillance equipment around their Maui home. He carried a .357 Magnum, and then a .45 automatic.

But would that stop the bomb that a caller threatened to blow him up with?

It didn't stop the threats against himself and his family and employees. It didn't prevent someone from trashing the family cars and writing "SCAB" on them in orange paint. It didn't prevent the thefts of tools and materials from his jobs.

And when Walter Mungovan agreed to testify against two Carpenters union business agents in a perjury trial, the government and he decided the danger was too great.

Mungovan was spirited away to the Mainland, placed in the Federal Witness Protection Program.

Mungovan was special. He had come to the FBI with something no one had ever offered a federal prosecutor here: secret tape recordings of his conversations with the union officials.

Mungovan testified he made the tapes after one of the business agents told him another contractor's jobs would be "torched" if the other man didn't sign up.

The business agents Mungovan testified against, William O. "Billy" Nishibayashi, 43, and Ralph Torres, 47, were convicted in May of lying when they denied trying to get Mungovan to sign up.

They were sentenced on July 15 to six moinths in federal prison.

But Walter Mungovan, his wife says, is in a kind of prison for life.

"I have no husband here any longer. My son is without a father," Cher says.

She sat down one day a few months ago and told her son, Ian, 12, what all the conversations about trials and FBI and protection and threats meant.

"Does it mean we'll never see him again?" Ian asked.

"It may mean that," Cher told him. "And then he went over and sat in a chair alone and cried," she said.

"But the saddest thing is what it's done to Walter. He loves Maui more than any other place in the world. He'll never see it again."

Mungovan, 36, has been relocated by the government somewhere on the Mainland, and will be given a new identity and a start on a new career.

He receives a small subsistence allowance. He saves from it and calls Cher from time to time. She has no idea where he is.

The stress of the past three years and the present separation has put a strain on their marriage, Cher says. There have been times when Mungovan said he wanted a divorce, just to take the pressure off her and the family.

But they have agreed that the problems are not between them and they are trying, in their way, to help each other.

"He hangs on to me right now like I am a lifeline to him. I feel like a person on the end of an oxygen line to a diver. That keeps me going. He's not doing very well—the program was designed for Mafia types who broke the oath of silence. I tell him you've got to hang in there and survive through this because I'm trying to do something outside to make life better."

Normally, all members of a witness' immediate family are placed in the protection program with him. Cher and Walter debated that, and Cher decided to stay out in the cold to carry on a civil lawsuit against the union and to campaign for tough new laws against labor union violence or extortion.

"There is a desperate need to bring to national attention the type of union activity which is prevalent in Hawaii, which has put my husband out of business and which is making it almost impossible for contractors to survive in the construction industry, she says.

Last month, Cher Mungovan borrowed enough money to fly to Washington, D.C. and began her campaign.

She told her story to congressmen, investigators and reporters.

And she lobbied for an amendment of a crucial law affecting federal prosecution of union violence, the Hobbs Act.

The Hobbs Act was written in 1946 to outlaw extortion in all aspects of interstate commerce.

Then, in 1970, a federal prosecutor indicted striking members and officials of a union on charges of conspiring to sabotage a Louisiana utility company's equipment by shooting at some transformers, draining oil from another, and blowing up a transformer substation.

But when the case was appealed, the U.S. Supreme Court ruled in a 5-4 decision in 1973 that the Hobbs Act did not cover violence or threats used to achieve legitimate union objectives.

Extortion, the court said meant taking property you have no right to and obviously the workers had a right to wages.

Ever since employers represented by such organizations as the U.S. Chamber of Commerce, the National Right to Work Committee and the National Center for Labor Policy, have battled to have the act amended to cover violence in labor disputes.

The amendment, offered by Sen. Charles Grassley of Iowa, is pending before the Senate Judiciary Committee.

Cher says she has been invited to return to Washington to testify on legislation relative to union violence.

Cher said she was not encouraged by her visits with Hawaii's congressmen, some of whom question the need to extend federal jurisdiction over crimes covered by state law.

The problem with that argument, she said in a letter to the judge in the perjury case, is that "public agencies that do have the right under the law in this state to police such activities are put under so much pressure from the unions because they themselves are members of a union, that they do not uphold the law when called upon to do so by the public."

In her case, she said, Maui police failed to log all the complaints made against the union.

"And we couldn't get a prosecution of anyone under state law," she says.

"It's a sad state of affairs if we all have to arm ourselves with microcassette recorders and Polaroid cameras to protect ourselves because we have no other reliable recourse," she says.

Maui Police Chief Joseph Cravalho disputes both Cher's statements about labor influence on unionized law enforcement or local politicians, and the evidence she cites.

An internal investigation revealed, Cravalho said that a number of Mungovan complaints about pickets were not reported by individual police officers, but only because "they didn't warrant police criminal sanctions against picketers."

Cher Mungovan says, "We aren't against unions. We just believe that in a democratic society one should be allowed to make a ——— without being forced, coerced or threatened into signing with a union."

Cher, who was born in Stratford-on-Avon, remembers union activity from both sides of the picket line in England. Her father was a management employee of British Leyland motor cars: her mother was the elected secretary of the second largest teachers' union in the country. But in neither of her parents' encounters with unions in England, Cher says, did they experience the kind of violence and harassment she says has occurred on Maui.

Walter got a job as a union carpenter when he returned to his native Massachusetts after Vietnam.

Mungovan continued as a union carpenter for 12 years and served on a union committee on Maui for contract negotiations.

He said he chose to go non-union when he opened his own company because he was building only custom homes and it was more efficient to have his carpenters do work of all trades rather than follow union work rules.

"He always paid his employees as much or more than prevailing union rates, plus benefits," Cher says.

Although the Mungovans won a battle in the criminal perjury trial of the two union business agents, Cher says they are losing the battle to stay alive economically. She is afraid she will lose the family home, and not be able to pay lawyers to pursue the civil suit.

Through Honolulu attorneys, she has set up the Walter and Cher Mungovan/C&W Construction Legal Defense Fund, at P.O. Box 365, Kihei, Maui, Hawaii 96753, and she has launched a national effort to raise money.

"My husband and I have lost everything we had," she said.

The business she says, has completely collapsed. C&W (Cher and Walter) Construction, which once employed 20, has no employees.

"We bid projects, came in as low bidder, and were told we couldn't be given the job for 'political reasons'—they were afraid of problems with the union."

The Mungovans have appealed to other contractors and their associations here for support, but Cher says some "are terrified of reactions from the unions here. Some are afraid to even mention the name 'Walter Mungovan' for fear of being blackballed by the unions."

Cher, who has premature gray in her long brown hair, describes hereself as "31 going on 80." She says she suffers constant pain from stress-related headaches that no specialists have been able to cure.

During her trip to Washington, she says, she slept little and ate less. She has lost 25 pounds in the past few months.

In addition to seeking money for the defense fund, Cher said, she wants anyone interested in making the Hobbs Act apply to labor union violence to send her a signature in support of that effort. She will attach it to a petition to Congress.

Cher Mungovan says their case is hardly unique, but that it is going to stand out because she is going to continue her husband's fight.

"My husband, as a matter of personal pride and principle, became a government witness. He stood for the thousands of individuals in the State of Hawaii who have had similar experiences with unions, whether they be the working man or employer.

"He stood his ground under incredible emotional and physical stress, both to himself and to the family. To be an innocent victim, the price of justice has cost him everything," she said.

"I wonder if any individual who takes a stand like this ever really wins," she says "But I hope that society can win something from the sacrifices individuals make."

[From the Honolulu Advertiser, July 25, 1983]

ISLE DELEGATION HEEDFUL BUT IT'S UPHILL BATTLE

Rep. Cecil Heftel says Cher Mungovan's story is "compelling," one that will give Congress "a substantive and unique point of view on the issue" of labor violence.

Sen. Daniel Inouye told Cher that "if it were possible to ensure that your particular tormentors would be punished I would do so."

Sen. Spark Matsunaga was described by aides as "extremely sympathetic to her plight and the plight of her husband."

But Cher Mungovan still has a long way to go if she is to win her campaign to extend the Hobbs anti-extortion act to cover labor violence.

A subcommittee last week voted a Hobbs Act amendment out for consideration by the full Senate Judiciary Committee, on which Inouye serves. But backers of the bill concede it will be a miracle if the legislation even gets another hearing before being killed.

Inouye says he cannot now commit himself to supporting the Hobbs Act extension because, "especially with respect to federal criminal law, I believe it is my duty to be certain that the province of the states should be imposed upon only when they are unable or unwilling to effectively address national underlying problems."

In fact Inouye said the conviction of two Carpenters union business agents of perjury in the Mungovan case demonstrates to him that "federal law providing for the policing of union activities is already very substantial."

Maui Police Chief Joseph Cravalho says existing state law is sufficient to handle the situation with properly trained police officers and properly educated labor and management officials. Police who themselves belong to unions are not reluctant to enforce the law against fellow union members, he said.

And, Cravalho said, organized labor influence is not confined to local and state politicians and policies, but extends to Congress and the presidency.

FBI Director William Webster, interviewed by The Advertiser during his visit to Hawaii last week, said that the bureau has been looking more to the use of the Racketeering-Influenced Corrupt Organization (RICO) statues than to amendment of the Hobbs Act as a means of countering labor violence.

Webster conceded RICO investigations and prosecutions are more complicated because the government must show organization for the illegal purpose. But he pointed out that the heavy RICO penalties, including forfeiture of property, "can go a long way toward putting the blocks to that kind of (illegal) activity."

Cher Mungovan says the RICO statutes have yet to result in a successful criminal prosecution in a labor violence case. "We are trying to use the civil penalties in the RICO law in our civil suit in this case, and my lawyers say this is the first time that's been done," she said.

Organized labor has charged that a Hobbs Act amendment would give employers more protection than employees have against extortion and threats.

The proposed amendment has moved farther than some labor leaders expected, partly because of advocates like Rep. Phillip Crane of Illinois.

Crane said three months ago in the House that the original legislation was based on the principle, in the words of Rep. Samuel Hobbs, that "a crime is a crime no matter who commits it, that robbery is robbery and extortion is extortion whether or not the perpetrator has a union card."

[From the Honolulu Advertiser, July 26, 1983]

KUPAU QUIZZED ON FIRE, SAYS HE WASN'T INVOLVED

Carpenters Union leader Walter Kupau was questioned by a federal grand jury Friday about a mysterious fire in April that destroyed a house being built by a non-union contractor in Hawaii Kai.

Kupau said in an interview yesterday that he testified he knew nothing about the fire.

He pointed out that he called a press conference June 2 at his Kalihi headquarters to deny any union involvement in the fire.

"There has been no evidence tying the Carpenters Union into a house fire in Hawaii Kai," Kupau said.

The Advertiser revealed June 1 that the FBI, Treasury agents and the Honolulu Police Department were investigating the fire. The contractor involved was being picketed by the Carpenters and other unions before the early-morning fire occurred.

Kupau and some 20 other officers of the union were subpoenaed to appear before the grand jury Friday.

Kupau, who has had a running battle with federal authorities over the past two months, accused them yesterday of going on a "fishing expedition" with the grand jury investigation.

Kupau said he testified about half an hour. He said the federal government was "harassing me and the union."

In May, the government convicted two of Kupau's business agents on charges of perjury in connection with their efforts to sign up a non-union contractor on Maui.

The Maui contractor, Walter Mungovan, provided secret tape recordings of conversations with the union officials which he said he made after one of them said another Maui contractor's job would be "torched" if he didn't sign a union agreement.

Mungovan has since been sent to the Mainland under the federal witness protection program because of government fears that his life is in danger.

At sentencing of the two business agents July 15, the government submitted a memorandum and affidavits from eight other contractors who said they had been threatened and harassed by the business agents.

[From the Honolulu Advertiser, Aug. 4, 1983]

LABOR LAW FIGHT CARRIED TO CAPITAL: UNION AIDE RENEWS ATTACK ON CONTRACTOR

(By Walter Wright)

Cher Mungovan, the Maui contractor's wife who is battling for changes in labor laws, is back in Washington, this time carrying close to 50 letters from Hawaii residents supporting her stand.

Meanwhile, Carpenter's Union Financial Secretary Walter Kupau has renewed charges raised unsuccessfully in court that Cher's husband, Walter Mungovan, "lied on the stand" and that the U.S. Attorney's office in Hawaii was guilty of "prosecutorial misconduct" in the recent trial of two Carpenters Union business agents charged with perjury.

Kupau also charged that Advertiser reporter Walter Wright is a "press agent" for Cher Mungovan, the FBI and the U.S. Attorney's office.

Cher Mungovan started her campaign after her husband was placed in the federal witness protection program on the Mainland for fear of his life.

Walter Mungovan's federal court testimony in May helped convict two union business agents from Maui of perjury in relation to their efforts to organize his non-union construction company.

The business agents were sentenced to six months in prison but are out pending an appeal; Cher Mungovan says her husband is serving a far longer "sentence" that may keep him in a kind of prison for life.

In the first two days following The Advertiser's publication of Mungovan's story July 25, she said, citizens responded with close to $2,000 in contributions for the non-profit Mungovan Legal Defense Fund designed to help the Mungovans meet the legal costs of a civil suit they have filed against the Carpenters Union and to help support Cher in her husband's absence. The fund's address is P.O. Box 365, Kihei, Hawaii 96753.

The largest category of letters were those which simply praised the Mungovans for their courage. One writer said "I have enormous admiration for you and your husband, for your courage to stand up for your principles, especially when you have to stand alone . . . Like you, I feel that the price of justice, particularly for victims, is very high, and I am sickened by this fact . . . "

Carpenters Union leader Kupau, who is also president of the AFL-CIO State Federation of Labor, in an interview with morning disc jockey Larry Price on KSSK, attacked Walter Mungovan's testimony that a business agent had threatened to "torch" a non-union contractor's job.

"Now you're local like me," Kupau told Price. "We don't go around saying, 'We're going to torch your house.' We say, 'We're going to burn 'em.'

"But the guy said quote and unquote, 'Torch the Job.' "

Kupau said amendments to the federal Hobbs Anti-Extortion Act which Mrs. Mungovan is seeking would mean that if there is "any violence or loud talking or so to speak on the picket line, you can be nailed for extortion . . .

"You know for yourself when people go across picket lines . . . there's give and take on both sides, and screaming and hollering and you don't like people crossing your picket lines and you don't like them telling you anything," Kupau said.

"From now on, if the Hobbs Act (amendment) passed, then that's going to be extortion."

In the past, the U.S. Senate Judiciary Committee has said it would not favor such a broad definition of extortion as that in Kupau's example. The proposal which got furthest before it died in 1979 would have applied the Hobbs act to labor violence only in cases where there was clear proof that the activity was a felony intended to cause death or severe bodily harm.

Efforts to amend the act were triggered by a Supreme Court decision in 1973 which threw out a case against union officers and members accused of blowing up a power company's transformer substation in a labor dispute.

Kupau acknowledged again that he and 20 union business agents and officers were subpoenaed by a federal grand jury recently, and said some were asked if they had started a mysterious fire which occurred on the Hawaii Kai job site of another non-union contractor being picketed by Carpenters and other unions earlier this year.

But Kupau said he was unaware of any violence or threats by union members or officials. "The members complain to us about non-union activity or non-union people doing our work. They don't—I hope they don't—go out physically and do things that they are not supposed to do . . .

"It's our job as business agents to ensure that if the guy's union or non-union he's paid the same rates as the union people, to protect our industry. We have contractors to protect and they are held at a disadvantage when somebody comes in and bids five or six dollars lower," Kupau said.

[From the Honolulu Advertiser, Aug. 19, 1983]

U.S. JURY INDICTS KUPAU ON SEVEN PERJURY COUNTS

(By Walter Wright)

Walter Kupau, financial secretary of the Carpenter's Union in Hawaii, was indicted by a federal grand jury yesterday on seven counts of perjury for denying he tried to sign up a non-union Maui contractor in 1981.

Kupau last night dismissed the charges as part of a Reagan administration campaign to "bust unions." He also said the U.S. attorney's office was "very timely" in bringing the charges on the day that his mother, Mrs. Jesse Kupau, 80, entered the Queen's Medical Center for a cancer operation.

Kupau, who is also president of the state AFL-CIO, said he did not remember making any false statements, but added that "there may have been statements made, a state of mind or in the context that they're asking, if they want to play word games with it."

It was not immediately clear what impact a conviction of the felony charges would have on Kupau's right to serve as a union official or as trustee of its multimillion-dollar pension fund.

But Kupau could face several years in federal prison. Each count against him is punishable by five years in federal prison and a $2,000 fine.

Indicted along with Kupau, also on seven counts, was union business agent Steven Suyat of Maui.

Two other Carpenter's Union business agents, William O. "Billy" Nishibayashi and Ralph Torres, were each convicted of four perjury charges in May and sentenced to six months in federal prison.

The entire case relates to the union officials' denial that their picketing and other activity, were intended to get a union contract with Maui contractor Walter Mungovan.

Mungovan has been placed in the federal witness protection program because federal officials feared for his life after he testified against the union officials. He has been given a new identity and a start on a job in another location.

Mungovan probably would be returned to Hawaii to testify in the trial of Kupau, since some of the charges relate a telephone conversation with the labor leader that Mungovan secretly taped.

Mungovan's tapes and testimony were key elements in the trial of Nishibayashi and Torres.

Mungovan's wife, who is in New York continuing a national campaign for changes in laws dealing with labor union violence, said last night when informed of the new indictments that "I'm glad that justice is finally being done."

Mrs. Mungovan also has sued the union, saying the contracting company she and her husband ran on Maui has been destroyed as a result of their refusal to sign a union contract. Her husband's willingness to take the stand against union officials, she says, has forced him to go into hiding for his own safety, and has caused their family to break up.

Kupau was charged with lying in four different proceedings; in sworn affidavits for two National Labor Relations Board cases in federal court in 1981, in his testimony before a federal grand jury in 1982, and in his testimony during the Nishibayashi-Torres trial this year.

The case turns partly on labor regulations that limit a union's right to picket for "organizational" purposes to 30 days.

"Informational" picketing can continue indefinitely. The government contends that the union's picketing was actually an attempt to organize Mungovan's firm—and not informational, as the union claims.

One of the key charges deals with Kupau's statements to Mungovan in a telephone conversation Feb. 27, 1981, which Mungovan secretly tape-recorded.

At one point on the tape, Kupau tells Mungovan:

"But, ah, in order to settle the whole beef, is going to have to be some type of agreement consummated and effective at some future date on all new projects prior to you negotiating or bidding on 'em. If anything bid or negotiated already, we don't want 'em. Anything new after that, then I think something like that might settle the whole beef."

The government contends that conversation shows the union's "beef" with Mungovan was purely an attempt to get him to sign a contract.

During the Nishibayashi-Torres trial, Kupau acknowledged that he said signing a union contract was the only way to the settle the beef. But at another point during the trial, Kupau testified that he meant only that Mungovan would have to give his workers pay and fringes equal to those provided under union contracts.

"Now that does not necessarily mean he had to sign a union contract," Kupau testified.

The government says Kupau's two statements are "irreconcilably contradictory."

[From the Honolulu Advertiser, Sept. 2, 1983]

KUPAU PLEADS NOT GUILTY; PERJURY TRIAL SET FOR NOVEMBER 1

(By Walter Wright)

Walter Kupau, financial secretary of the Carpenter's Union in Hawaii and president of the state AFL-CIO, yesterday pleaded not guilty to seven counts of perjury over what the government says was his attempt to organize a non-union contractor on Maui.

"We are not guilty of any wrongdoing, we are innocent," Kupau told reporters outside the federal courthouse after his arraignment before U.S. Magistrate Joseph Gedan.

The indictment against him, Kupau charged, was part of a continuous effort by the Reagan administration and U.S. Attorney Dan Bent of Honolulu "to take the labor movement apart."

Kupau said he believes that Bent is trying to get appointed to a federal judgeship next year.

Bent, who was out of town, could not be reached for comment.

Also entering a plea of not guilty to seven related perjury counts was Carpenter's Union business agent Steven Suyat of Maui. Suyat told reporters he had no comment on the case.

Trial for Kupau was set for Nov. 1, but may be postponed because of defense attorney Matt Pyun's schedule. Trial for Suyat was set for Nov. 8; he is represented by Mark Kawata.

Both men were released without any restriction on their travel despite Assistant U.S. Attorney Elliot Enoki's attempt to have their movements limited at least to the state.

"There will be no travel restriction for Mr. Kupau," Magistrate Gedan said.

Kupau is charged with lying when he gave a sworn statement that picketing of non-union Maui contractor Walter Mungovan in 1981 was not intended to get Mungovan to sign a union contract.

The government says secret tape recordings that Mungovan made of a conversation with Kupau prove the contrary.

Kupau suggested to reporters that the government is using a double standard in the case.

"What a non-union contractor says can be called a misstatement of fact, but a person carrying a union card is committing perjury," Kupau said, referring to his earlier charge that Mungovan lied in the case.

Mungovan's testimony helped convict two other Carpenter's Union business agents, William O. Nishibayashi and Ralph Torres, on perjury charges earlier this year.

They were sentenced to six months in prison, but are free on bail pending appeal.

Mungovan has been placed in the federal witness protection program because of government fears that his life was in danger. He was sent to the Mainland and given a new identity and a job in the construction business.

Kupau, in response to questions, yesterday discounted a death threat that he last month told the county prosecutor's office he received in the form of an unsigned post card addressed to "Walter Deadman Kupau."

"I receive all kinds of letters. I never did consider it a threat," Kupau said. He said he felt the post card had been blown out of proportion by some of the media.

Meanwhile, a spokesman for unions supporting Kupau said the Hawaii United Labor Coalition will try to raise a defense fund for the Carpenter's Union official.

Joe DeMattos, chairman of the fund-raising committee of the Hawaii United Labor Coalition, said his group has 40 unions that are united in their efforts to resist what he called "union busting" efforts by management, the Reagan administration and others opposed to labor.

The committee hopes to supplement the fund with a banquet in October.

"We feel Walter is being singled out," DeMattos said.

The Hawaii United Labor Coalition was formed earlier this year by unions supporting the Machinists union employees of Qantas Airways, who lost their jobs when the airline decided to use non-union ground workers.

[From the Honolulu Advertiser, Aug. 27, 1983]

KUPAU COULD KEEP UNION POST EVEN IF CONVICTED OF PERJURY

Carpenters' Union financial secretary Walter Kupau would not be barred from holding that or other union offices even if he is convicted of perjury, a review of labor laws reveals.

Kupau was indicted Aug. 18 by a federal grand jury on seven counts of perjury over what the government says were his efforts to get a Maui contractor to sign with the union.

But perjury is not one of the crimes for which a person can be barred from union office.

The Labor Management Reporting and Disclosure Act of 1959 bars from union office any person convicted of any of a number of crimes, including robbery, bribery, extortion, murder and rape, for a period of five years following completion of their sentence.

Kupau could face a lengthy sentence in federal prison if convicted. Each count is punishable by a maximum of five years in prison and a $2,000 fine.

Kupau and union business agent Steven Suyat of Maui, who also was charged with several perjury counts, will be arraigned at 10 a.m. Sept. 1 before U.S. Magistrate Joseph Gedan.

WHY THE UNION WANTS MY HUSBAND DEAD!

(By Sharon Churcher)

Before the nighmare began, before the death threats and the bomb scare and the menacing visits by strangers in the black of the foreign night, Cher Mungovan, a 31-year-old English woman, though she had found paradise in that haven of free enterprise, the United States.

She was living with her American husband, Walter, and small son on the magically beautiful Hawaiian island of Maui. Her house, set in a tropical garden and with its own swimming pool, looked out on one side to the shimmering, turquoise ocean.

Weary of the industrial strife plaguing the Midlands, Cher's father, Ian Norrie, a British Leyland manager in Coventry, and her mother, a Birmingham comprehensive school department head who had braved picket lines to reach her pupils during teachers' strikes, emigrated to join the young family in 1979.

Cher's brother went with them, and the three pitched in with Cher and Walter to found a house-building company which made £ 340,000 in its first year, and seemed set to top £ 1 million in its second.

SECRET

Today, the company has closed, the family can't afford the mortgage on their home, and Walter, fearing for his life, has had to go into hiding, guarded by Federal marshals in a location kept secret even from Cher.

The cruel irony, as U.S. Prosecutor Daniel Bent alleged recently in court, is that 'the driving force behind (this) destruction of a man, a family, a business and an ideal' were two American trade union officials.

The pair alleged the prosecutor, launched a relentless campaign against the company and its people after Walter and Cher refused to sign a collective bargaining agreement.

'We felt the unions were ruining Britain. We never expected this here.' Cher's mother, Margaret Norrie, told me at 60, she has had to take an 18-hour-a-day, seven-day-a-week job with an Hawaiian estate agency to keep her family afloat.

'We were living in terror, but now it's gone on so long that I'm used to it,' said Cher, who has the haunted look of a lonely, hunted deer.

'This is America. They can't force you,' she had told Walter when the Carpenters' Union started demanding jurisdiction over the company's workers—who had voted by secret ballot to stay non-union. She now realises how wrong she was.

For, while American unions are indeed more tightly regulated, on the whole, than their British counterparts, there is one astounding gap in the controls.

THREATS

The U.S. Supreme Court has ruled that a union isn't breaking the Federal law if it stoops to threats or even violence, so long as it is pursuing a 'legitimate' objective—such as organising the Mungovans' work force.

Sure enough, a war of nerves started and was stepped up until it even petrified Walter—a much decorated Vietnam hero.

The company was brought almost to a standstill, with suppliers later saying they had been warned by the union not to deliver.

Then the employees began to get threatening calls.

Cher says: 'One wife called me in hysterics because somebody, saying he was from the union, phoned her, and told her they'd just broken her husband's legs. His legs were OK, but the call had had its effect.'

Anonymous male voices would whisper down the Mungovans' home phone, 'you're a dead man' and one caller threatened to blow up the house.

Then Walter was warned by local people that they'd heard a hit-man had been hired to kill him.

Union officials have persistently denied having a hand in any of this, and the local police did little to help, Cher says.

And the FBI told them 'that even if the union sets fire to one of our sites and we have photos and witnesses, they couldn't do anything,' Mrs. Mungovan says.

'I learned that people had been shot in similar labour disputes, and they'd caught the killers and they'd been let off.'

The FBI did, however, persuade the local police chief to give Walter a permit to keep two guns by the bed.

Moreover, discovering that two union officials had lied about the purpose of pickets who'd been sent to the builder's sites, Prosecutor Dan Bent was able to go after the pair for the relatively minor offence of perjury—a charge which he made clear in a document filed in court was just 'the tip of the iceberg.'

The officials were convicted—and got six months prison terms.

Indeed, Walter Mungovan seems to have been the chief casualty of their trial, in which he was a key witness. Two unidentified men tried unsuccessfully to abduct him during the case, and the Government, deciding his life was now definitely, at risk, whisked him away into its so-called Federal Witness Protection Programme.

'I went to the bathroom and when I got back to the room he'd gone. The FBI told me: "The marshals have got him",' Cher says, tears in her eyes.

Federal marshals allowed Cher five minutes with her husband, before he was taken away to an unknown destination, where he will spend the rest of his life under an assumed name; the Daily Mail is not allowed to carry a picture of him.

'They even shredded up a tiny photo he had in his wallet of our son, Ian.' Cher says. 'It's as though Walter never existed'.

Cher had an affluent upbringing in a Worcestershire village with her two brothers, Stewart and Alister.

She emigrated to the States when she was in her early twenties and worked as a restaurant executive.

ANGER

Her parents decided to emigrate after what seemed to them endless years of Labour government and industrial unrest.

'It was depressing to me what the unions were doing. Hawaii looked like paradise,' said Mrs. Norrie.

Mr. Norrie used to be a cheery person. 'Now,' says his wife, 'he's a sad cynic. He sees no hope,' she says. 'And what hope is there? I am very angry at American justice.'

The Norries, who sold everything to come to the U.S., are down to their last few dollars after pouring their savings into paying bills that followed the building company's closure.

'I suppose we might just be able to raise the fare back to England,' Cher's father says bitterly.

Cher still get anonymous death threats against her husband. 'The Federal marshals suggested I pretent we were divorced so they'd leave us alone, but no one is forcing us into that,' she vows.

This courageous English woman has sold personal belongings, to pay for a trip to Washington where she is lobbying Congress to bring unions under the same laws that apply to other citizens.

She has requested an audience with President Reagan, telling him in a letter that though unions may almost have brought Britain to its knees before the election of Margaret Thatcher, it is illegal for anyone there to use threats or violence.

The Government will tell her where Walter is when she says she is ready to join him in his anonymous new life. She won't do that, she says, "until I've seen the President and the law has been changed."

[From the Star-Bulletin & Advertiser, Sept. 11, 1983]

KUPAU ELECTED, DEFIES ORDER BY NATIONAL UNION

(By Charles Turner)

Walter H. Kupau, indicted last month on federal perjury charges, was re-elected to his eighth term as Hawaii State AFL-CIO president yesterday and defied national union orders that he take a leave of absence pending the outcome of this trial.

The action could mean that the national AFL-CIO will place the Hawaii federation under trusteeship, as was done to the Colorado federation in 1972 when it ignored AFL-CIO President George Meany's order to remain neutral in endorsing George McGovern for U.S. president.

National AFL-CIO President Lane Kirkland has demanded in writing that Kupau take leave from office. But more than 50 delegates to the state federation's biennial convention at the Hilton Hawaiian Village Hotel unanimously adopted a resolution supporting Kupau's continued leadership.

The federation has some 50,000 members. However, there are about 40,000 more AFL-CIO members whose unions have chosen not to affiliate with the federation, either because they disagree with Kupau's leadership or don't want to pay the 30-cent monthly per capita charge.

After he was re-elected yesterday, Kupau told reporters: "I'm going to continue—the same way I have for the past 14 years. I don't accept threats. If he (Kirkland) wants to do something, let him do something. I'm not going to walk away from a challenge."

Kirkland's personal emissary from national headquarters in Washington, Alan Kistler, tried in vain to head off the confrontation between Kupau and the AFL-CIO hierarchy.

Kistler met behind closed doors in the state AFL-CIO executive board's early morning meeting and urged Kupau and his supporters to obey Kirkland's order that Kupau take leave "pending the initial disposition" of his perjury case.

Kistler also appeared before the full convention later and pleaded with them to accept the order.

He pointed out that Kirkland's order did not prevent Kupau from seeking re-election, but only barred him from serving actively while his perjury case is pending.

A leave of absence means Kupau "doesn't discharge the duties" of his office, Kistler explained, to sounds of low groans from the audience.

Kistler said at least two other state federations had gone through the leave-of-absence procedure (North Carolina and Pennsylvania) in recent years without any problems.

And Kistler emphasized that by ordering Kupau to take leave, the national AFL-CIO was not prejudging the perjury case.

"It is traditional and essential . . . that an indiviual be considered innocent" until proven otherwise, he said.

"We understand what the atmosphere is," said Kistler, who explained later that the national headquarters had been informed about Kupau's indictment. A federal grand jury indicted the union leader on charges of lying about the Carpenters union's involvement in non-union construction activities on Maui.

Kupau is head of the Carpenters union, in addition to his unpaid job as state federation president.

Kistler told the delegates the national AFL-CIO "has no desire . . . to add to the ammunition of those who would assault the labor movement of Hawaii."

"Keep in mind that your enemy is not the national AFL-CIO ," he urged.

"Your enemy—our enemy—is those who have never accepted collective bargaining.

"What the AFL-CIO is asking is that he (Kupau) abide by policy."

A strongly worded resolution condemning the national AFL-CIO was adopted unanimously after its introduction by Ben Toyama, head of the Hawaii Federal Metal Trades Council.

Kupau was nominated without opposition and elected unanimously by voice vote.

Delegates applauded loudly as he stepped to the podium, shook hands with Kistler and said:

"I appreciate the confidence of the delegates. I'm not going to accept the policy of the national AFL-CIO ."

Kistler swore in Kupau and nearly two dozen vice presidents who will serve with him for the next two years—but seemed a little embarrassed by the task.

Asked after the convention adjourned what steps, if any, the AFL-CIO would take against Kupau, Kistler said he didn't want to "speculate."

But he said he would stay in Hawaii and try to persuade Kupau to accept Kirkland's order to take a leave of absence.

"That is the policy of this state organization as well as in others," he said.

Asked about Kupau's firm intention to stay on the job, Kistler said: "That may not be Walter's last word."

He said he was convinced that Kupau would "act in the best interests of the (labor) movement."

And he said Kirkland probably would be in touch with Kupau to "counsel him" about the implications of defying the order.

Kupau has said repeatedly that his indictment on the perjury charges was part of the Reagan administration's effort to deprive legitimate unions of the right to protect their members from lower-paying nonunion contractors.

He denied lying to the grand jury or to investigators.

In other business, the Hawaii State AFL-CIO voted unanimously to support Walter F. Mondale's candidacy for the Democratic presidential nomination at next summer's convention in San Francisco.

A resolution was passed praising Mondale for his pro-labor stands while a U.S. senator and for his "leadership, compassion and dedication" to union issues.

HERE'S THE RESOLUTION BACKING KUPAU

This is the text of the resolution supporting Walter Kupau's re-election and pledging continued support to him as state AFL-CIO president:

"Whereas, it has come to the attention of our convention delegates that the National Federation of the AFL-CIO has an internal policy regarding the election of officers who have been the subject of an indictment; and

"Whereas, this internal policy dictates that anyone who is the subject of an indictment cannot and should not actively hold elective office within the AFL-CIO; and

"Whereas, we believe that this policy of the National Federation of the AFL-CIO completely ignores a basic right which is guaranteed our citizens by the laws of our nation; and

"Whereas, this basic right of one's innocence until proven otherwise would be raped of its very existence were we to follow the policy of the National AFL-CIO; and

"Whereas, we as delegates to this convention firmly believe that to follow the policy of the National Federation of the AFL-CIO would be contrary not only to our goals as a labor coalition, but also to our very beliefs as citizens of this country; and

"Whereas, it is our duty as delegates to this convention as well as citizens of our nation to uphold and practice ideals which we feel truly represent the spirit of our society; and

"Whereas, our unbridled belief in one's innocence until proven otherwise forms the basis upon which this resolution is being introduced; and

"Whereas, we believe in and trust our President, Walter H. Kupau; and

"Whereas, a disservice would be done not only to our State Federation of the AFL-CIO, but also to our community as a whole, if the policy of the National Federation were to be followed; and

"Whereas, labor faces rough roads ahead, we can see no other effective leader than Walter H. Kupau; now therefore

"Be it resolved that this convention of the Hawaii State AFL-CIO, while recognizing the policy of the National AFL-CIO, totally rejects such a policy, whose very aims run contrary to our belief as members of the AFL-CIO and our rights as citizens of the United States of America; and

"Be it further resolved that we wholeheartedly endorse and recommend the election of Walter H. Kupau to the Presidency of the Hawaii State AFL-CIO, as he is the only individual who can and will lead labor through our most difficult period."

HERE'S THE LETTER FROM KIRKLAND

This is the text of AFL-CIO President Lane Kirkland's letter to Walter Kupau, written Tuesday:

"It is my understanding that you are the subject of an indictment returned by a federal grand jury and that the indictment charges you with criminal wrong-doing in connection with your activities as a union officer.

"Based on that understanding and the AFL-CIO policy governing both its officers and employees, and its state and local central bodies and directly affiliated local union officers and employees who are indicted, it is my duty as AFL-CIO President to advise you that on and after the date of hand delivery of this letter you may not serve as President of the Hawaii State AFL-CIO unless and until the criminal charges against you are dismissed or you are otherwise exonerated.

"I, therefore, request you to take an immediate leave of absence as Hawaii State AFL-CIO President without loss of any pay or other benefits you are receiving from the State Federation pending the initial disposition of the above-noted criminal proceedings.

"If you do not do so, I will have no choice but to take all necessary steps to bar you from holding office in the Hawaii State of AFL-CIO.

"For your information, AFL-CIO policy regarding individuals who are under indictment does not bar you from running for office at the upcoming Hawaii State AFL-CIO Convention AS LONG AS the delegates are fully advised before the election that unless and until the criminal charges against you are dismissed, or you are otherwise exonerated, you may not serve as a State Federation officer.

"If you decide to run for office at the Hawaii State AFL-CIO convention, Alan Kistler, the AFL-CIO Director of Organization and Field Services, is to be given the convention floor to read the delegates this letter."

[From the Washington Times, Sept. 12, 1983]

FAMILY PAYS PRICE IN FEDERAL WITNESS PROGRAM

Cher Mungovan on union violence and the Federal Witness Protection Program.

Walter Mungovan, a decorated Vietnam veteran, entered the federal witness protection program on the advice of the government earlier this year. His wife, Cher Mungovan, was interviewed by Washington Times columnist and national reporter Tom Diaz. The following is an edited version of that interview.

Question. Mrs. Mungovan, you've not been able to see your husband, Walter, since the middle of May, Why?

Answer. He's in the government's Federal Witness Protection Program because of threats and fear for his life after he testified against two business agents from the AFL-CIO Carpenters and Joiners Union in Hawaii.

Question. How has your husband being in the witness program changed your lives?

Answer. It's completely split our family apart. In December 1980, my husband was probably the most successful custom home builder in Hawaii, with 20 employees. Since then, we've lost everything and my husband—who committed no crime—now must live like a hunted animal.

I had a choice at the time, I could have gone into the witness program. But we decided that I should stay out because we have civil suits in federal and state court, and if I were in the witness program there would be no way of pressing those suits. We also feel it's important to make Americans aware of the union violence going on in their own country.

Question. Do you know where your husband is?

Answer. No, I have no idea.

Question. Do you have any way of finding out?

Answer. No. Because it would break security for me to know.

Question. Do you communicate with him at all?

Answer. I'm only able to write letters. And once in a while he calls me. He's allowed to call me.

Question. Do you have children?

Answer. I have one son who's 12.

Question. Is he with you, or with him?

Answer. He's with me.

Question. How did you go from a normal, successful life in the state of Hawaii to this situation?

Answer. My husband was a union carpenter for 13 years. In 1979, he got his contractor's license and started building custom homes. Then the union targeted him. They tried to get him to sign a contract and told him that they would picket us if we didn't sign up. One union official told my husband that he was going to get another non-union contractor to sign up, no matter what—even if he had to torch his job.

Question. Torch his job?

Answer. Torch his job. When my husband came home and told me that, I said, "This is America. Why should we have to sign a contract if we don't want to?" We weren't paying wages below the union wage. We always paid them as much, or more, than union rates, plus benefits. So I told him to take his micro-cassette recorder and record the conversations. Because if they're going to set fire to one of our houses, they're not going to leave a note. We need some evidence. He started carrying a tape recorder, and after a few months of recording conversations we realized that we had them on perjury. That was when we started to use the tapes.

Question. How did you use the tapes?

Answer. After we refused to sign, they picketed three of our jobs. We went to the National Labor Relations Board in Honolulu and demanded an election to decide whether our employees wanted to be in the union. It was unanimous against the union. In fact, half of our employees at the time were already holding union books and they didn't want the union to control our company.

Then we went to federal court and asked for an injunction to get the union off of our job. We had to go back twice. The first time the judge ruled that he couldn't decide the case, because the NLRB hadn't filed all of my husband's affidavits, although they had filed all of the union's. The second time the judge ruled basically that the case was double jeopardy, that we had brought the union back in on the same charges again, and he dismissed the case.

Now, up until this time, nobody knew we had the tapes, which we'd kept in a safety deposit box. We took them to the NLRB, with transcripts, and they got us another court date. We were sure that we would get our injunction because the tapes proved that the affidavits that they had filed in federal court and the statements and affidavits that they had filed with the NLRB were lies. The NLRB sent copies of the transcripts of the tapes over to the union office on Friday morning. At lunch time, the union went in and said they wanted to settle our case.

The "settlement" the NLRB agreed to was that the union would stay away from our jobs for 30 days—retroactive. So we got nothing out of the whole thing. We were so angry. The NLRB said that it was cheaper for them to settle it than it was to go to court.

Question. What more happened with the tapes?

Answer. We were so angry with the NLRB that we took the tapes to the Organized Crime Strike Force. They sent us to the FBI, who investigated and got perjury indictments against two union officials and an employee of a concrete company who had signed an affidavit on behalf of the union. All three were convicted and sentenced to six months in prison.

Question. One would think that was a happy ending to the story.

Answer. They all are out on appeal. The appeal will probably take a year. So nothing has changed. Nothing has changed as far as the impact it has had on our state.

Question. How did you go from there to your present situation?

Answer. Ever since we were first picketed, we've had threats made against us—particularly against my husband—threatening phone calls. We're going to kill you. You're a dead man. That type of thing. Our vehicles were vandalized. We had tools and lumber stolen. My family received threats. My brother had to go around denying that he was even related to me and Walter.

The FBI determined that there was sufficient reason for Walter to protect himself, and they had the police department issue him a permit to carry a .357 magnum, which he later changed to a .45 automatic. He carried that for the last year. Walter was in Vietnam in '65 and '66, a sergeant in the infantry. He came home with a lot of medals. He was a war hero, a disabled veteran. He said to me at one point, I didn't fight in Vietnam in the jungle for over a year to come back and be killed in a Maui canefield and not know who did it.

Question. How did it come about that he entered the witness program?

Answer. I really don't know exactly why the government suggested it. You know I'm not told everything. I really don't want to know everything. But during the trial we were staying under an assumed name in a hotel room, which the government got for us. We were in the room one day when two men came to the door posing as FBI agents and said that they had to take us off downtown for the office.

Question. Did you go with them?

Answer. No.

Question. What then?

Answer. I can't say.

Question. OK, anything you don't want to say, I don't want you to say.

Answer. There's a reason for it, the pending investigation.

Question. I see.

Answer. But after that, the FBI moves us into another hotel and put us under 24-hour guard. The next thing I knew the U.S. Attorney's Office had requested the marshals put him under the witness-protection program. There's a possibility that they will be bringing him back to Hawaii for further testimony. They want to make sure that he's alive.

Question. This has changed your life so that it will never be the same again, hasn't it?

Answer. It's completely distrupted our lives since the day it happened. Maybe it would have been easier to sign a union contract. It would probably have put us out of business the same way. We couldn't have competed back then, being a small construction company against the large union companies. The union knew that. The problem was, and the thing I want to make clear, was that they never made any attempt to encourage our employees to join the union. They weren't interested in our employees joining the union. They wanted our company to sign up. And then we would have had to let go all the people who worked for us, and gone to the union and hired new carpenters. And if those carpenters wanted jobs, they would have had to go to the union and pay the initiation fees and monthly dues.

Question. Why are you in Washington?

Answer. I've come here as last resort. The public has to become aware of the need to amend the Hobbs Act—the federal anti-extortion law—to make unions liable under federal law. The average American doesn't know what the Hobbs Act is, let alone the Hobbs amendment. And there's really no reason why they should know. It's only when something happens which directly affects you that you find out that you can't prosecute them.

Question. What is the Hobbs Act?

Answer. The Hobbs Act is the federal anti-extortion and violence law. But in 1973, the Supreme Court ruled in the Enmons case that it doesn't apply to unions. That case started when the Electrical Workers Union had a dispute with a company in Louisiana. When the owner refused to negotiate. One of his substations was blown up and rifles were fired at his equipment. A federal judge said that because the union was "furthering legitimate union objectives" unions were exempt from the law. The Supreme Court agreed. So since 1973, union officials and employees have been able literally to get away with murder.

Sen. Charles E. Grassley, R-Iowa, has introduced an amendment to the Hobbs Act so it will cover union violence. I'm hoping that when Congress comes back from vacation. I can get appointments with each member of the Senate Judiciary Committee to make them aware that we desperately need this bill and this amendment. I also hope to be able to meet with President Reagan, to enlist his support.

Question. What sort of feeling do you have for the legislative system? Do you think it's going to work?

Answer. I think that it's very hard for senators and congressmen. They listen to testimony and they're given piles of documented information. It's impossible for them to sit and read all this. There are more than 3,000 seperate cases of union violence recorded in the United States, including some where people have died. But there's no way that each member of these committees can sit down and read all this documented information I have absolutely nothing against unions per se, and the union members, because don't believe that 90 percent of the time they know what the hierarchy is doing. It's the union officials that bother me. If unions could sell unionism on it's own merits, then I wouldn't be here, my family wouldn't be in the position that it's in, and neither would a lot of other people in the United States.

[From the Honolulu Advertiser, Sept. 14, 1983]

KUPAU, STILL DEFIANT, REFUSES AGAIN TO STEP ASIDE

(By Charles Turner)

Walter Kupau rebuffed the leadership of the national AFL-CIO again yesterday, refusing to step aside as president of the Hawaii State AFL-CIO.

Kupau—who has been indicted by a federal grand jury on perjury counts dealing with his Carpenters' union and its dealings with a non-union contractor on Maui—met for about an hour with Alan Kistler, organizational-field services director of the national AFL-CIO.

Kupau said later that he told Kistler he wouldn't take a leave of absence as ordered by Lane Kirkland, national AFL-CIO president.

It was the third time Kistler had failed to change Kupau's mind. Previous attempts were made on Saturdays and on Monday.

Kirkland sent a letter to Kupau on Sept. 6 directing him to step aside until his perjury case is settled in federal court.

Kupau was indicted last month on seven counts alleging that he lied about his role in the Carpenters' union efforts to curb the growth of non-union contracting on Maui.

Kupau is business representative of the statewide Carpenters' union as well as the unpaid president of the state AFL-CIO labor federation.

The union's executive board recently voted to pay for Kupau's legal expenses in the perjury case, as well as that for business agent Steven Suyat of Maui, who also was indicted last month.

Meantime, Kupau's negotiating power on behalf of the carpenters has had repercussions in this year's round of contract talks.

Another of Hawaii's trade unions, the 2,500-member Operating Engineers, is contemplating a strike because of difficulties in negotiating a new contract.

The Operating Engineers (Local 3) is still talking with the General Contractors' Labor Association, representing major construction companies throughout the state. But Wallace Lean, business manager for the Operating Engineers, said management hasn't discussed wages although the old contract expired Sept. 1.

He said the employers don't want to match a $2.50-an-hour wage hike which the Carpenters' union, under Kupau, negotiated three years ago with the construction industry.

The $2.50 boost is in two segments of $1.25 each: one which went into effect Sept. 5, and the second due in March 1984.

The money was part of a four-year agreement signed with industry in 1980.

Lean told his union's members recently that if the Operating Engineers don't get the same $2.50 increase, they will drop from fifth to ninth position in the dollars-per-hour ranking of construction unions.

"For us, the Operating Engineers, to enter into any moratorium would be certain disaster at this time," Lean said. "Once we forgive that $2.50 we will never have another chance at it or any part of it again. There will never be any catch-up."

The Operating Engineers, who make $15.83 an hour, handle bulldozers, scrapers, compactors, tractors and other heavy equipment.

Carpenters were making $15.40 an hour before they got their $1.25-an-hour pay boost on Sept. 5.

They won't have to worry about contract talks until next September.

Meantime, at least one of the construction unions in negotiations this year has ratified a new contract.

The Electrical Workers (Local 1186) approved a one-year pact last week which provides for an increase of about 7 percent, raising their basic rate from $14.45 to $15.50 an hour.

An effort by union negotiators to get the same $2.50-an-hour pay hike as the Carpenters was turned back by the electrical companies as being far too expensive.

[From the Washington Post, Sept. 23, 1983]

UNION ACCUSED IN HARASSMENT OF CONTRACTOR

(By Jack Anderson)

When Walter Mungovan telephones his wife never knows where he is and she never asks. Mungovan is in hiding, not because he's a criminal, but because the Justice Department believes his life is in danger.

Unlike others in the federal witness protection program, Mungovan must be separated from his wife and their 12-year-old son. She has filed suit against the people the Mungovans hold responsible for the family's plight. So she has to be available for court appearances and fund-raising efforts to finance their lonely fight.

Mungovan has not been permitted to talk with reporters since he entered the witness protection program, but he relayed a message to my associates Dale Van Atta and Indy Badhwar. My associates have been investigating the case for three months.

"I am in the position of being cut off from my family, whom I dearly love, through no fault of my own," Mungovan said. "I can't justify what has happened to me when all I did was work hard and try to make an honest living. . . ."

How did this happen to Mungovan? A memorandum filed in federal court last July by U.S. Attorney Daniel A. Bent lays the blame squarely on officials of the Carpenters union in Hawaii.

"[They] were the driving forces behind the destruction of a man, a family, a business and an ideal," the prosecutor wrote. "They transformed Walter Mungovan, a combat veteran, a carpenter and a successful contractor, into a man whose business and family life were virtually destroyed, and into a man who feared for the safety of himself and his business. They bullied him, they threatened him, they shut him down and they willfully and maliciously perjured themselves. They deserve to be severely punished."

In fact, two union officials have been convicted of perjury and two others are facing trial. But it is the Mungovans who have been punished most severely.

After 13 years as a carpenter and union member, Mungovan went into business for himself in 1979. Within a year his construction company had 20 employes and was still growing.

Then the Carpenters union decided to organize Mungovan's employes. Picket lines went up at the company's work sites, charging that Mungovan was paying substandard wages.

But the employes, who were actually paid at or above union scale, voted unanimously not to join the union. That should have ended the picketing.

In federal court last year Mungovan testified that union officials indicated that the pickets would remain until he signed up. At one point, Mungovan testified, a union official told him that another contractor's work site would be "torched" if he didn't unionize, a remark Mungovan interpreted as a threat against his own company as well.

The months of picketing were slowly wrecking Mungovan's fledgling firm. But the decorated First Air Cavalry veteran decided to fight back. he gave the FBI affidavits and secretly taped conversations with union officials.

That's when the Justice Department decided Mungovan must go into hiding. His business is now ruined, and he is more than $30,000 in debt.

His British-born wife, Cher, came to Washington to speak to members of Congress, and hopes to be able to make a personal appeal to the president for help. She wrote to the White House: "I am here alone . . . trying to fight for what is right. . . . I'm the wife of an innocent man who cannot ask, but needs your help. I am the mother of a son who said to me on the phone, 'Mom, why don't you ask President Reagan? Maybe he cares.' "

[From the Washington Post, Sept. 25, 1983]

'THEY SHUT HIM DOWN'

(By Jack Anderson)

Cher Mungovan's secure and happy life was destroyed by union harassment. Her husband, Walter, is in hiding after testifying in the successful prosecution of Carpenters Union officials in Hawaii. His once-thriving construction business has folded. The family is deeply in debt.

Cher Mungovan had declined to join her husband in the federal witness protection program. Instead, she has borrowed money to come to Washington and lobby members of Congress for legislation that—while too late to help the Mungovans—could prevent the future victimization of others.

The law she wants amended is the Hobbs Act, passed in 1946, which made violence, extortion or threats of physical harm a federal crime punishable by up to 20 years in prison. But in an astonishing 1973 decision, the Supremne Court ruled that the Hobbs Act did not apply to violence or threats committed by union members engaged in the pursuit of "legitimate" union goals.

The ruling came in the case of *United States vs. Enmons*. The defendants were utility company workers who were seeking a new union contract. The federal government charged them with five specific acts of violence, including firing high-powered rifles at transformers, draining oil from a transformer and blowing up a transformer installation.

The high court's decision exempted union members engaged in labor disputes from prosecution under the Hobbs Act. Since 1973, many state laws have been rewritten to comply with the *Enmons* ruling.

In the words of Rep. J. Kenneth Robinson, "The Supreme Court sharply split from the intent of Congress and took the position, in effect, that the legitimacy of the ends sought by the union agents—contract concessions—excused from prosecution under the Hobbs Act the use of wanton destruction as a means to force employers to accede to their demands."

In the Mungovan case, the Carpenters Union persisted in trying to organize his 20 employees even after they had unanimously rejected the union in secret balloting.

According to a memorandum filed in federal court by U.S. Attorney Daniel Bent, union officials "transformed Walter Mungovan, a combat veteran, a carpenter and a successful contractor, into a man whose business and family life were virtually destroyed, and into a man who feared for the safety of himself, his family and his business." The memo summed up: "They bullied him, they threatened him, they shut him down."

The prosecutor attached to his memorandum a supporting statement by Cher Mungovan, which detailed the frightening events that followed her husband's refusal to kowtow to the union:

"Our employees have had their lives threatened; we have received a bomb threat at our house; our vehicles have been maliciously damaged; materials and tools have been stolen from our job sites; we have received threatening phone calls; family members have received threatening phone calls. . ."

After Mungovan went to the FBI with evidence against the union officials, the federal government diligently prosecuted them. The prosecutors were hobbled by the emasculated Hobbs Act, so they cited union officials for perjury. Two have been convicted; two others are awaiting trial.

A top Carpenters Union official denied to us that his union members had threatened the Mungovans. He declined further comment on advice of counsel.

Recent Senate testimony revealed that in the past five years, at least 3,350 acts of violence have been reported against union members. Thanks to the loophole created in the Hobbs Act by the Supreme Court, few of the incidents resulted in prosecution.

Even if the states hadn't changed their laws in response to the high court's ruling, there are persuasive reasons why federal jurisdiction should be re-established over labor-management violence and extortion.

Sen. Strom Thurmond, explained why in a recent statement: "In reality, state and local authorities are not equipped or strongly motivated to deal with the consequences of clashes between powerful competing interest groups within their communities.

"This is particularly true with regard to labor disputes . . . The political implication may be overwhelming to a local official who appears to take sides in a labor dispute by vigorous enforcement of criminal laws. I am sure the most comfortable position is one of non-involvement."

Cher Mungovan was interviewed at length by my associates, Indy Badhwar and Dale Van Atta. She has been going from one congressional office to another in her tenacious effort to get the *Enmons* loophole closed. As a practical political matter, it seems unlikely that members of Congress—particularly the senators who are vying for the presidential nomination—will risk the wrath of organized labor by amending the Hobbs Act before 1985.

But not everyone is cowed by the unions' political clout. Sen. Charles Grassely has introduced a bill that would enable the federal government to punish actual or threatened violence—regardless of the perpetrators or their objectives.

[From the Star-Bulletin & Advertiser, Oct. 23, 1983]

MARSLAND BACKS ANTI-EXTORTION AMENDMENT

(By Walter Wright)

Honolulu Prosecutor Charles Marsland yesterday endorsed amendment of the federal Hobbs Anti-Extortion Act to cover violence in the course of a labor dispute.

His stand counters statements by opponents of the amendment who say state and local laws are sufficient to cover such violence.

Marsland said he became aware of the need for such a change from the case of Maui building contractor Walter Mungovan, who has been placed in the federal witness protection program after testifying in federal court against Hawaii Carpenters' Union officials.

Marsland, a member of the minority Republican Party, said legislators in Hawaii ignore the kind of corruption he said occurred in the Mungovan case.

Mungovan's wife, Cher Mungovan, will be the key witness at a hearing on the Hobbs Act on Tuesday before the U.S. Senate Judiciary Committee.

Marsland, in a letter addressed to members of the committee, said Hawaii residents "are angered and ashamed by what has happened to the Mungovan family." But the prosecutor said, there is in Hawaii "a protective attitude toward crime and the criminal defendant (which) permeates both our criminal justice system and our Legislature."

As a result, Marsland said, "our government (is) impotent when it comes to providing fundamental safety and security to our people."

Marsland said that after Mungovan made clear he would not unionize his company, he and his family were threatened, his automobiles were damaged, and tools and equipment were stolen.

Mungovan then began tape-recording his conversations with union officials, and—after the FBI said his life was in danger—installed alarms around his home and began carrying a weapon.

Now that Mungovan is in the witness protection program, Marsland said, "he can no longer live on Maui with his wife and family. Instead, he's living eleswhere in the United States with a new name—living like a hunted animal. And there is the possibility that he will never be able to return home."

Marsland said he was sickened by the story, "not only because a family has been rippped apart and sent into hiding simply because they wanted to be independent, but also because this is precisely the type of corruption the lawmakers in Hawaii continue to ignore."

[From the Maui News, Oct. 25, 1983]

KUPAU'S BID TO HAVE FEDERAL CHARGES DISMISSED TURNED DOWN

Honolulu UPI—A federal judge has turned down motions to dismiss federal perjury charges against Carpenters Union head Walter Kupau, clearing the way for Kupau's trial Nov. 1.

Kupau faces seven perjury charges for statements he made during the trial of Maui Carpenters Union officials Ralph Torres and Nishibayashi earlier this year.

Federal officials say Kupau lied about efforts made to organize the company of Maui contractor Walter Mungovan. The two official Ralph Torres and William Nishibayashi were convicted of perjury in that trial.

Kupau attorney Leslie Fukumoto argued Monday the National Labor Relations Board violated the union's constitutional rights by restricting picketing at a construction site being built by Mungovan.

Fukumoto also contended court documents from that trial were irrelevant to the present case. Last week he tried unsuccessfully to bar the acts and statements of Torres and Nishibayashi from the trial

Federal judge Harold Fong rejected both arguments.

Mungovan, whose testimony was instrumental in convicting Torres and Nishibayashi, is currently in hiding under the federal witness protection program.

His wife, Cher Mungovan, was scheduled to testity before the U.S. Senate Judiciary committee in Washington today in favor of amending the Hobbs Act to make violence in a labor dispute a federal crime.

The Hobbs Act was passed in 1946 to make obstruction of interstate commerce by extortion or by acts or threats of violence a federal crime

The U.S. Supreme Court exempted labor disputes from the Act's coverage in 1973. The court said it was concerned the law could be used by employers to break strikes.

The amendment to the act sponsored by Sen. Charles Grassley, R-Iowa, would not apply to conduct that results in minor body injury or minor property damage.

Opponents of the amendment say state and local laws are sufficient to cover labor violence.

[From the Honolulu Advertiser, Oct. 24, 1983]

ANTILABOR VIOLENCE AMENDMENT BACKED

(By Walter Wright)

The Reagan administration is backing an amendment to the Hobbs Anti-Extortion Act to make it apply to violence in labor disputes. The Advertiser has learned.

The stand, revealed by Assistant Attorney General Robert A. McConnell, represents a major shift in the administration's position on the controversial measure.

The Senate Judiciary Committee will hold hearings tomorrow on the bill, sponsored by Sen. Charles Grassley, R-Iowa.

One of Grassley's key witnesses in favor of the bill will be Cher Mungovan, wife of a Maui building contractor who has been placed in the federal witness protection program after testifying against Carpenters' Union officials here.

The Mungovans say their lives were threatened, property damaged and business destroyed after they refused to sign an agreement with the union.

the Justice Department's McConnell, in an Oct. 18 letter to Mrs. Mungovan, said: "We strongly support your efforts to secure this change in the Hobbs Act. The Reagan Administration is formally on record as endorsing the legislative changes which you seek."

McConnell said the government owed the Mungovans "a debt of gratitude for your courageous assistance in connection with successful criminal prosecutions in Hawaii."

Mungovan's testimony and secret tape recordings were instrumental in convicting Carpenters Union business agents William Nishibayashi and Ralph Torres of perjury for their denials that the union was trying to organize Mungovan's company when it picketed in 1980 and 1981. They were sentenced to six months in prison but are free pending their appeal.

Union financial secretary Walter Kupau, who is also head of the State Federation of the AFL-CIO, is scheduled to stand trial on similar charges Nov. 1.

McConnell's letter brings Reagan behind the Hobbs Act amendment for the first time, and just a year away from a presidential election in which labor's support will be critical.

The administration earlier had opposed Hobbs Act amendments as a means of curbing picket-line violence.

In December 1981, Robert Bonitati, White House chief of labor liaison, said Reagan "saw no evidence that these matters (picket-line and related violence) could not be handled by state and local authorities."

At most, the administration then favored a judicial review of a 1973 Supreme Court's ruling which exempted labor disputes from coverage by the Hobbs Act.

The Hobbs Act itself, passed in 1946, made it a federal crime for anyone to obstruct interstate commerce by extortion or acts or threats of physical violence.

In Hawaii, Kupau has charged that the Hobbs Act amendment would make violence by union members a crime of extortion subject to federal law, but leave employers subject only to state law against specific violent acts.

The Grassley amendment specifically would not apply to conduct in the course of peaceful picketing which consists solely of minor bodily injury or minor property damage (less than $2,500) and is not intended to extort property.

Those exceptions are provided, Grassley said, specifically to overcome the fear expressed by the Supreme Court in 1973 that the law would be used against any "worker who threw a punch on the picket line, or the striker who deflated the tires of his employer's truck." Such incidents would not be made into federal cases under his proposal, Grassley said.

Mrs. Mungovan has been campaigning for changes in the law ever since her husband went into hiding in the witness protection program. She has also been pressing a civil suit against the Carpenters' Union in Hawaii, and defending against suits the union has brought.

Her efforts were considered instrumental in bringing the Hobbs Act amendment to the full Judiciary Committee for a vote for the first time.

She has lobbied the media as well as legislators—an effort which is expected to result in an appearance tomorrow on "Good Morning America" and possibly the "Today" show. She is also scheduled to appear on Cable News Network's "Freeman Report" tomorrow.

Syndicated columnist Jack Anderson is about to distribute his third report on the Mungovan case, and columnist James Kilpatrick is believed to be preparing a column for nationwide distribution later in the week.

While she has had some effect on Capitol Hill, Mrs. Mungovan has apparently not been able to win endorsement of the Hobbs Act amendment from any members of Hawaii's congressional delegation.

Backers of the bill indicate they are still about three votes shy of the majority required to get the bill out of the 18-member committee and to the full Senate for a vote.

Similar legislation in the House of Representatives, where Democrats have a majority, has even less chance of passage.

[From the Honolulu Advertiser, Oct. 25, 1983]

KUPAU DENIES UNION VIOLENCE OR THREATS

(By Walter Wright)

Union Financial Secretary Walter Kupau yesterday denied the Hawaii Carpenters' Union has been involved in any violent actions or threats toward Maui contractor Walter Mungovan.

"The only violence on the picket line was when Walter Mungovan's (employee) ran down my business agent," said Kupau, adding that police records prove his statement.

The accused employee has denied running down business agent Ralph Torres, and the issue is being fought in a civil suit.

Mungovan himself was placed in the federal witness protection program for fear of his life after he agreed to testify against union officials in the case.

Mungovan gave the government a tape recording which the government said proved that one union official threatened to "torch" another man's construction project if he didn't sign with the union—a charge the official denied.

Mungovan and some employees testified about threats from union officials earlier this year when Torres and fellow business agent William O. Nishibayashi were tried for perjury in connection with the union's activity against Mungovan.

The two men were convicted of perjury, but no union official has been charged with or convicted of any threat or act of violence in the Mungovan case.

Federal agencies do not even investigate complaints of labor-management violence or threats for possible prosecution under the Hobbs Act today, because a 1973 Supreme Court decision exempts activities in the course of a legitimate labor dispute from the law's coverage.

Kupau made his comments yesterday on the eve of U.S. Senate hearings on legislation to change that law. Mungovan's wife, Cher, will be a key witness before the Senate panel today, arguing that the federal law should be applied to labor-management disputes because local authorities are unable or unwilling to tackle such cases.

Organized labor argues that the law would be used mainly to harass unions, inhibit picket activity for new contracts and organizing purposes, and create a national police force" to supervise strikes and labor disputes.

Kupau, asked yesterday about Mrs. Mungovan's campaign to change the law, said that was her right of free speech. "She can say anything she wants to," he said. "Proving it, is another matter."

Kupau was interviewed by reporters as he left a federal courtroom after an unsuccessful attempt to dismiss a seven-count perjury indictment on which he will be tried Nov. 2.

Federal Judge Harold M. Fong yesterday denied Kupau's motions to dismiss the perjury charges. Kupau, like Nishibayashi and Torres, is accused of lying when he denied that the union was trying to organize Mungovan's non-union company in 1980 and 1981.

Kupau argued that it made no difference if he perjured himself in federal court hearings on a National Labor Relations Board case because the board was trying to deny the union's First Amendment right to speak and picket.

Kupau also contended that his affidavits in the case were immaterial because the judges were ruling only on the reasonableness of a request for an injunction, not on the facts dealt with in Kupau's sworn statement.

[From the Maui News, Oct. 27, 1983]

LABOR VIOLENCE NOT DEALT WITH BY STATE

If violence in labor disputes were handled at the state level Cher Mungovan would not be in Washington trying to win support for a measure that would give federal law enforcement officials the authority to prosecute those involved.

The Mungovan case is well known in Hawaii, and here in Maui. We must have the greatest respect for a woman who has fought on against ridiculous odds. She has watched her family structure crumble, her financial security dissolve and is about to lose her home after losing her husband.

She has completed testimony before the Senate Judiciary Committee, or more correctly before the handful of members who showed up. Her story reads like a very bad novel, or like an episode that could only have taken place behind an iron curtain.

She and her husband operated a construction firm here in Maui. Their crime was in failing to hire carpenters with union affiliation. Threats, harassment, fear finally drove them out of business, and Mungovan himself into hiding under the federal witness protection program.

The push to change the laws which deal with, or more properly do not deal with, labor violence is given little chance in Washington. It will have a difficult time to get through the Senate and is given no chance at all to find support in the House.

Senator Daniel Inouye and Rep. Dan Akaka have made it plain they do not support the measure, both claiming that such violence should be dealt with at the state level. We say again that Cher Mungovan would not be in Washington, testifying to the shambles her life has been left in, if local authorities had the method, the means or the mind to handle it.

[From the Maui News, Oct. 27, 1983]

MUNGOVAN RETURNS FOR PERJURY TRIAL

Honolulu (UPI)—Maui contractor Walter Mungovan has been returned to Hawaii and is expected to testify in the upcoming perjury trial of Hawaii Carpenters Union leader Walter Kupau, according to television news reports.

Mungovan has been living under federal protection on the Mainland since he agreed to testify in the perjury trial of two Maui officials of the union earlier. They were convicted and sentenced in July to spend six months in prison and pay $1,000 fines. They have remained free while the convictions are being appealed.

Mungoven's wife, Cher, has been in Washington urging Congress to strengthen labor laws against union violence. The Mungovans say union tactics forced them out of business, after they refused to agree to hire only union workers.

None of the Hawaii carpenters officials has been charged with any violent crimes in the case.

Indicted with Kupau in August was Maui business agent Steven Suyat. They are accused of making false statements in affidavits submitted in the Mungovan case in 1981 regarding the intent of picketing at Mungovan's C&W Construction Co. worksites.

Suyat also was indicted for telling the court he did not know the meaning of the word "scab."

Both have remained free on $10,000 signature bonds while awaiting early November trial dates.

KNUI RADIO—EDITORIAL—NOVEMBER 1, 1983

Last week, Cher Mungovan testified before the Committee on the Judiciary of the United States Senate. She told about how she and her husband had been put out of the contracting business by threats and violence on the part of a Carpenter's Union. She described how their employees were forced into the unemployment lines, and how her family and her parents were reduced to abject poverty. And she said her husband is somewhere . . . she doesn't know where . . . under the Federal Government's Witness Protection Program.

Well, those things happen. Trouble is, these things happened here on Maui in the past three years. And it involves a lot more than a crooked union. If Ms. Mungovan's testimony is true, we have an intimidated police department . . . prosecutors who refuse to prosecute . . . and judges who are questionable, at best. And we have at least one Senator, Dan Inouye, who is quoted as having said that there is already a substantial body of federal law to handle such situations . . . the implication being that we don't need any more.

That may be academically correct. But unions are not supposed to achieve benefits for their members by threats and violence. They are supposed to organize, negotiate, and . . . if necessary . . . strike and picket.

And when something is causing police, prosecutors and judges to refuse to act when they should be acting, the community has a serious problem. If Cher Mungovan's testimony is accurate . . . Maui is a community like that.

[From the Honolulu Star-Bulletin, Nov. 3, 1983]

TRIAL OF KUPAU BEGINS; SECURITY EXTRA STINGENT

(By Charles Memminger)

Carpenters Union leader Walter Kupau went on trial in federal court yesterday on charges that he lied in affidavits, before a grand jury and at the trial of two union officials in connection with a labor dispute with a Maui contractor.

Kupau has called the charges both racially inspired and an attempt by the U.S. Attorney's Office to destroy the union.

But Assistant U.S. Attorney Mark Bennett told the jury in his opening statement that the heart of the case was an attempt by the union to organize illegally C&W Construction Co., a small construction business owned by former Carpenters Union negotiator Walter Mungovan.

Bennett said Mungovan will be a "crucial government witness" and will describe how Carpenters Union business agents tried to force him to sign a contract by using illegal picket lines at his Maui business.

Mungovan testified in the perjury trial earlier this year of business agents William Nishibayashi and Ralph Torres.

He is in the federal witness protection program because of threats to his life.

Because of the threats, security at the Kupau trial is more stringent than usual. Everyone entering the courtroom, including jurors, must pass through an airport-style metal detector. U.S. marshals also are searching handbags and briefcases.

Kupau's attorney, Matthew Pyun, protested to U.S. Judge Harold Fong about the security, saying it would prejudice the jury. He also complained that his files and briefcase were searched on his way into the courtroom.

Fong said the security is there to protect everyone in the court-room. Kupau has told investigators that he has also received death threats.

Bennett told the jury that the seven perjury charges against Kupau go back to a 1980 labor dispute between Mungovan and the Carpenters Union.

Mungovan set up his business in 1978 and by 1980 had three major jobs to build houses on Maui.

As his business grew, Mungovan hired more employees, paying them wages comparable to union scale, as well as providing other benefits, Bennett said. But he said Mungovan will testify that he could not sign the union contract because additional union costs would not allow him to be competitive with non-union contractors bidding on the same projects.

Bennett said Mungovan did plan to sign a contract when his business got big enough.

Nevertheless, Bennett said, union agents Torres and Nishibayashi continued to press Mungovan to sign a contract and ordered informational pickets be set up at three work sites.

He said secret tape recordings made by Mungovan of his meetings with the business agents will show that the purpose of the pickets was to force Mungovan to sign a contract and not to protest alleged substandard wages as the union had claimed.

Torres and Nishibayashi were convited of perjury in affidavits they submitted to the National Labor Relations Board, which investigated the labor dispute. The NLRB found that the pickets were being used illegally, Bennett told the jury.

Nishibayashi and union official Gordon Yanagawa testified yesterday after being granted immunity by the government.

The trial was to resume today with further tesimony by Nishibayashi followed by Torres and union official Steven Suyat.

[From the Honolulu Advertiser, Nov. 3, 1983]

CARPENTERS' BUSINESS AGENT TESTIFIES

(By Walter Wright)

A Carpenters Union official testified yesterday that "informational picketing" is "a weapon to be used, just like a gun" to organize nonunion contractors.

Union business agent Gordon K. Yanagawa confirmed in federal court yesterday that he had made that statement to FBI and Treasury agents last spring; and he said he still believes it to be true.

That statement goes to the heart of the issue in the perjury trial of Yanagawa's boss, Walter Kupau, which began yesterday.

Kupau, financial secretary of the Carpenters Union and president of the AFL-CIO State Federation of Labor, is accused of lying repeatedly by denying that his union was trying to organize Maui contractor Walter Mungovan when it set up picket lines on his job sites in 1981.

Kupau's motive for lying, the government argues, is that the picketing was not "informational" as Kupau claimed, but actually an illegal effort to use long-term picketing to force Mungovan to sign, even after his employees had voted against such a contract.

Federal labor law allows informational picketing to go on indefinitely, but organizational picketing can continue for no more than 30 days, and must stop for at least a year if employees reject the union in an election.

Thomas W. Cestare, acting head of the National Labor Relations Board office here, testified yesterday that the NLRB would consider efforts to prevent suppliers or other workers from crossing a picket line to be part of an organizing effort rather than "informational."

The government contends the union tried to keep others from delivering materials to Mungovan jobs, and continued union picketing and threats shut Mungovan down and destroyed him, his family and his business.

But Kupau's defense attorney, Matthew Pyun, told the jury yesterday in an opening statement that the facts will prove Kupau honestly believed picketing Mungovan was simply to inform the public of substandard wages.

When Kupau signed sworn affidavits in a National Labor Relations Board case, he "believed the boys on Maui were picketing that job for informational purposes only," Pyun said.

And Pyun said he will call a linguist, an expert on the use of language, to prove there were no inconsistencies in sworn statements Kupau made to a federal grand jury investigating the case, and in the trial last May of union business agents William O. Nishibayashi and Ralph Torres.

Pyun's argument indicated he will try to put distance between Kupau and business agents like Yanagawa, Nishibayashi and Torres; and at the same time shift the jury's attention to two people—Mungovan and Assistant U.S. Attorney Mark Bennett.

Whatever problems there were between Nishibayashi and Mungovan, Pyun said, "Kupau was not privy to that."

Pyun said Mungovan was known as a person who could use the language well, and will give answers but then try to "wiggle out" of the answers when questioned closely.

Mungovan, Pyun said, decided the union was trying to get him, and responded by secretly tape recording his conversations with union officials so he could try to "get something on them" in a National Labor Relations Board case.

Mungovan was hurt not by the union but by his own practices, which resulted in a disagreement with one of his customers, Pyun said. And Mungovan claimed he couldn't afford to pay union wages and benefits even though he was working on "cost-plus" jobs in which he would get all his costs plus a 15 percent fee, Pyun said.

The government says Mungovan was paying his carpenters more in take-home pay than they would get under a union contract. But he felt he couldn't afford the additional cost of union benefit programs or deal with strict union rules limiting the kinds of work his small crews could do.

Mungovan has been given a new identity and relocated to the Mainland under the federal witness protection program because of government fears his life was endangered after he testified in the May case. He is expected to testify against Kupau, probably next week.

Pyun objected yesterday to what he said was the obvious presence of armed U.S. marshals in the courtroom, and the use of a metal detector and searches outside the courtroom to make sure no weapons are brought in.

U.S. District Court Judge Harold Fong said the Marshal's Service decides what protection is appropriate for everyone in the courtroom. When Mungovan takes the stand, it is expected an armed marshal will be stationed just a few feet away.

As for Bennett, Pyun said the jury would have a chance to see the manner in which he asked the questions which led to charges that people's answers were inconsistent.

Yanagawa, Nishibayashi and Torres were all subpoenaed as witnesses yesterday, and each was given immunity from prosecution so they could not refuse to testify under the Fifth Amendment for fear of self-incrimination.

Yanagawa's attorney, Renee Yuen, said Yanagawa had been questioned in an investigation of arson—an apparent reference to an April fire which damaged a Hawaii Kai house built by another non-union contractor being picketed by the Carpenters and other unions.

Yuen and attorneys for Nishibayashi and Torres asked Fong either to reconsider his ruling that the three must testify, or to allow them to appeal the question to a higher court before the trial went further, Fong denied both requests.

[From the Honolulu Star-Bulletin, Nov 4, 1983]

JURORS MAY HEAR TAPES TODAY

(By Charles Memminger)

The perjury trial of labor leader Walter Kupau continued yesterday with extensive questioning of a former union business agent about conversations he had with Maui contractor Walter Mungovan.

Mungovan secretly recorded conversations he had with Carpenters union agent William Nishibayashi in December 1980. The tapes are key to the government's contention that the union was trying to force Mungovan to sign a contract.

Attorneys questioned witnesses yesterday on the basis of transcripts of the tapes but the jury may hear the actual recordings today.

On one tape Nishibayashi said that things "could get a hell of a lot worse" for Mungovan if he did not reach an agreement with the union.

Nishibayashi, testifying under questioning by Assistant U.S. Attorney Mark Bennett, said he was referring to legal problems Mungovan could have when he made that statement.

When asked by Mungovan why the union was concentrating on his company, Mishibayashi said, "We can't catch all of them."

But, according to a transcript of the tape, Nishibayashi later told Mungovan, "You tell us who are the guys bidding against you and we'll shut them down."

Nishibayashi said Mungovan only recorded about a third of their conversation.

Another business agent, Ralph Torres, testified yesterday that he had not tried to stop people from crossing the picket line to Mungovan's work sites. But he did admit telling Mungovan that if he signed a union contract, the pickets would be removed.

Torres said he never talked to Kupau before being hired by the union. In fact, Torres testified, under questioning by Kupau's attorney Matthew Pyun, that he had been part of an "anti-Kupau" faction of the union.

Because of the union dispute, Mungovan eventually filed a complaint with the National Labor Relations Board.

After an investigation, the board found that the union was illegally using informational pickets in an attempt to organize Mungovan's company, C&W Construction Co.

Both Nishibayashi and Torres have been convicted of perjury in affidavits they submitted to the NLRB, which investigated the labor dispute.

The seven perjury charges Kupau faces stem from affidavits he also submitted to the NLRB, as well as from statements he made to a federal grand jury and at the trial of Nishibayashi and Torres.

Mungovan, under federal witness protection, is scheduled to testify in the trial, but because of security considerations, Bennett would not say when Mungovan would take the stand.

MUNGOVAN BACK IN COURTROOM HERE TO TESTIFY AGAINST KUPAU

(By Walter Wright)

Walter Mungovan returned to a Hawaii courtroom yesterday to testify that the Carpenters' Union shut him down and devastated his construction business.

Paler and thinner than when he left Hawaii six months ago for fear of his life, Mungovan was guarded by four armed U.S. marshals.

The six-foot six-inch First Air Cavalry veteran of the Vietnam War took the stand and stated his true name for the first time in months. He gave his address as his family's Maui home.

But in fact Mungovan has been living in a secret Mainland location under an assumed name as part of the federal government's witness protection program.

Outside the courtroom, waiting for her turn to testify, was Mungovan's wife, Cher, who has declined to join him in the protection program so that she can press a civil suit for damages against the Carpenters Union.

Mrs. Mungovan has been able to visit with her husband briefly during the past week for the first time in half a year. Her young son also had a brief reunion with Mungovan last weekend.

Facing Mungovan from across the courtroom was Walter Kupau, the financial secretary of the 4,000-member Carpenters' Union local here and one of the most powerful labor leaders in the state.

Kupau is on trial on seven counts of perjury for his repeated denials that he and the union were trying to use "informational" pickets illegally to get Mungovan to sign a union contract in 1981.

Two of Kupau's top assistants on Maui, business agents William Nishibayashi and Ralph Torres, were convicted last May on similar charges after Mungovan testified against them.

It was during that earlier trial that Mungovan was rushed into hiding after two men posing as FBI agents tried to lure him from his hotel room, supposedly to examine some papers.

Yesterday Mungovan again identified three tape recordings he secretly made of conversations with Nishibayashi, Torres and Kupau in the winter of 1981.

In one of them, Kupau is heard to say he understands Mungovan is interested in signing "the union agreement."

Kupau goes on to say that "in order to settle this whole beef, the picket lines off, both sides withdraw . . . in order to settle the beef is going to have to be some type of agreement consummated and effective at some future date on all new projects prior to you negotiating or bidding on 'em."

Defense attorney Matthew Ryun is trying to demonstrate that the union was only trying to get Mungovan to sign an agreement to pay standard wages and benefits even if he continued as a non-union shop.

But Mungovan testified that in none of the tape-recorded conversations with Kupau and the business agents was there any reference to such a non-union agreement.

The union, Mungovan said, was trying to organize his company, and didn't care if its destroyed it in the process.

Picketing for organizing purposes is illegal if it exceeds 30 days without the filing of a petition for an election, or if it goes on during a period of a year following such an election.

Mungovan said the picketing began in January 1981 before the election and continued into April, long after his men voted 15-0 against the union.

Kupau insists the union was involved in "informational" picketing, which can continue indefinitely.

During cross examination, Pyun brought out that Mungovan didn't start tape-recording conversations with the union officials until after he had talked to the National Labor Relations Board about unfair labor practices and called for an election.

Pyun sought by his questions to suggest that Mungovan tried to trap the union officials into admissions of illegal labor practices so he could win his National Labor Relations case.

Pyun also challenged Mungovan's assertion that the union broke him, asking whether the true reason that Mungovan stopped working on one major house construction project was that the owners were dissatisfied with him.

Mungovan denied that, saying he thought owner John Swain was really worried about violence on the job site, disruption of deliveries, and the chance his home would be sabotaged and burned because of the labor dispute.

Mungovan agreed that he also had a dispute with Swain over billings on the project.

The defense has suggested that far from coercing Mungovan, union officals were simply listening to Mungovan's own repeated inquiries about a union contract.

But Mungovan insisted it was Torres and Nishibayashi who were after him to sign a contract.

And another witness, Maui construction consultant Herman Adalist, testified that Kupau asked him to ask Mungovan to contact Kupau so that the entire dispute could be settled "in 15 minutes over a cup of coffee."

Adalist said he contacted Kupau because suppliers for another contractor on a project Mungovan had worked on were refusing to cross picket lines.

Mungovan, asked why he recorded conversations with clients and others in addition to union officials, told the jury he believes he suffers from dyslexia, a disorder in which letters are transposed in reading and writing. He said he found the tape recorder a convenient way to make memos and keep records.

But he also asked that he realized after Nishibayashi threatened to "torch" another contractor's job that "these boys were playing rough" and he had better make a record so it wouldn't be his word against theirs.

Nishibayashi testified earlier he didn't say "torch" but "touch" when mentioning another contractor's job.

[From the Maui News, Nov. 7, 1983]

MUNGOVAN ON STAND TO TESTIFY AGAINST KUPAU: FORMER MAUI CONTRACTOR KEY WITNESS IN TRIAL OF UNION BOSS

HONOLULU (UPI)—Former Maui contractor Walter Mungovan emerged from this secret Mainland location and began testimony Friday in the perjury trial of labor leader Walter Kupau.

The 36-year-old Mungovan is a key witness in the trial of Kupau, who is accused of making false statements to a grand jury and the National Labor Relations Board, and during the trial of two Carpenters Union agents.

Mungovan had secretly recorded conversations with Carpenters Union officials, including one with Kupau, in 1981.

He said Kupau had set up "informational" picket lines at Mungovan's job site in an effort to organize his employees.

Mungovan has been living at a secret location on the Mainland as part of the federal witness protection program. That came about as a result of his testimony earlier this year in the trial of two of Kupau's assistants on Maui, William Nishibayashi and Ralph Torres. They both were convicted of perjury.

During that trial, two unknown men posing as FBI agents tried to lure Mungovan from his hotel room.

Since Mungovan has gone into hiding, his wife Cher has carried on a campaign against labor violence. She recently testified at a Senate hearing on a bill that would bring labor violence under federal jurisdiction. Such cases currently are handled at the state level.

The Mungovans also are pressing a civil suit against the Carpenters Union. The union has filed a countersuit against the Mungovans.

There are seven perjury counts against Kupau for his numerous denials that his union was using "informational" pickets to get Mungovan to sign a union contract in 1981.

Mungovan testified Friday that the union was trying to organize his company at all costs, and denied the assertions of defense attorney Matthew Pyun that union officials ~~only~~ wanted Mungovan to sign an agreement to pay union wages and benefits, even if the company continued as non-union. Mungovan said neither Kupau nor his aides ever mentioned such an agreement.

Mungovan was scheduled to take the stand again today when the trial resumes.

[From the Maui News, Nov. 8, 1983]

LOSSES: FAMILY, BUSINESS GONE IN FIGHT AGAINST UNION

(By Robert McCabe)

HONOLULU—As she sat waiting outside a federal courtroom in Honolulu where a jury is hearing testimony in the perjury trial of Carpenters Union official Walter Kupau, Cher Mungovan said proceedings were started on Maui that will result in the loss of her unfinished home.

The scrappy English expatriate who had chosen Maui as the place she wanted most to settle down, reported Monday that foreclosure action has started in Maui County's 2nd Circuit Court for the takeover of the home she and her husband, Walter, began building before their self-imposed exile from Hawaii.

A check by The Maui News of court documents this morning, however, found no evidence of any foreclosure action involving the Mungovans by name.

According to Cher Mungovan, she and her husband owe $148,000 on the unfinished house in Maui Meadows and, because of circumstances that developed over their stand against the Carpenters Union, they have not been able to make any of the mortgage payments and now must surrender the property.

The home is perhaps the final tangible loss the Mungovans must endure because of their dispute with the union.

According to Mrs. Mungovan, the issue—including the couple's decision to oppose what she described as "illegal" tactics to force unionization of their C&W Custom Home Construction Co., which they also lost—has "totally devastated" their lives and forced them away from Maui.

"We want to come back to Maui because we don't really want to live anywhere else, but under the circumstances, I don't think we'll ever be given the chance to pick up the pieces and start a new life there again," she said.

She pointed out that this is because her husband, a decorated Vietnam War veteran, has been forced to enter the government's federal witness protection program due to threats and fears for his life after he testified against two of the union's business agents in earlier perjury trials.

As such, he lives in a secret Mainland location under an assumed name. He rarely gets to see his wife, except when they are brought together, as is the case now, to testify in trials that stem from their original complaint.

Walter Mungovan's existence, according to his wife, is painful and frustrating because he is forced not only to be apart from his wife, but his 12-year-old son as well.

Mungovan entered the witness program in May of this year during a trial of the union business agents, William O. Nishibayashi and Ralph Torres, both of Maui, when two men posing as FBI agents attempted to lure him away from his hotel room.

Efforts to trace the two men who, it is believed, intended foul play, have so far met with no success. The incident has not been officially linked with the Carpenters Union.

Although Cher Mungovan could have entered the witness protection program also, she decided to remain on the outside in order to carry out a civil lawsuit against the union and to seek tougher laws that would dampen union militancy that leads to acts of violence and extortion.

Her battles have brought her national and international attention and have resulted also in a movement to amend the Hobbs Act, which affects federal prosecution of union violence.

The act was first adopted in 1946 and altered in 1973 by a U.S. Supreme Court decision, which held that union violence was not a federal matter if a labor dispute was involved. Under the act's provisions, the Mungovans discovered, they had little recourse in seeking an end to problems they experienced because of their stand against the unionization efforts.

However, their complaints against the union resulted in the convictions of Nishibayashi and Torres, who were brought to trial for perjury when they denied attempting to coerce the Mungovans into signing a union contract.

The Mungovans were subjected to picketing and other measures aimed at disrupting their construction operations for several months during 1980 and 1981.

The complaints by the Mungovans are also responsible for the indictment by a federal grand jury—and the resulting trial—of Kupau, who is financial secretary of the Carpenters Union in Hawaii.

The trial of Kupau, on seven counts of perjury, began Nov. 1 in Federal Judge Harold Fong's court. Both Mungovans have testified in the case.

[From the Honolulu Advertiser, Nov. 19, 1983]

KUPAU'S CONVICTION

Organized labor has long proved itself an essential and constructive part of the American scene, and that has been especially so in Hawaii. Its contributions will continue.

But, just as there are some corporate officials in America who illegally cut corners, so there are some union leaders who abuse their positions, break laws and deserve to be punished.

Thus it is with a sense of justice being served that we view the conviction by a federal court jury on six counts of perjury of Walker Kupau, leader of the Carpenters Union in Hawaii and president of the AFL-CIO State Federation of Labor.

Kupau's conviction is especially poignant because he is an up-from-the-ranks local leader who came to put power above principles. The result is a disservice to labor—and to blame others for what happened will not ring true with the public any more than it did with the jury.

Kupau was found guilty of lying under oath, as were two Maui business agents of the carpenters union in a previous trial. But the central issue involves tactics used against unorganized Maui contractor Walter Mungovan in 1981. He was eventually forced out of business and into hiding in the federal witness protection plan.

What happened was not typical of union organizing activity here, although there have been allegations of improper pressure put on other Maui contractors.

Mungovan and his wife Cher deserve considerable credit in fighting this case, gathering evidence and making it something of a national issue. We would note Mungovan's statement that the real lesson is "that there is a Bill of Rights and they (union leaders) can't destroy a man and his business and then lie to cover it up."

This is a case with ongoing implications involving Kupau's labor positions, costs to the carpenters union, and possibly national legislation. But for now it is painful reminder of what can happen when legitimate practices in any field are carried to the point of abusing the rights and livelihood of others.

[From the Honolulu Star-Bulletin Nov. 10, 1983]

CONTRADICTIONS SURFACE IN KUPAU'S TRIAL

(By Charles Memminger)

Closing arguments were to begin today in the perjury trial of Walter Kupau following yesterday's stormy questioning of the union leader by an assistant U.S. attorney.

Yesterday also was a day for contradictions with a number of community and business leaders attesting to Kupau's reputation for truthfulness, but a Honolulu police detective telling the jury, "he's not a very truthful person."

There also was no consensus on how to interpret a transcript of a secretly recorded telephone conversation between Kupau and Maui contractor Walter Mungovan.

The government submitted one transcript of the conversation into evidence, which Kupau said had at least 64 errors. Asked by Assistant U.S. Attorney Mark Bennett to point out some of the major errors, Kupau replied that at one point, the government had put in three dots, to indicate a pause in the conversation.

"I didn't say 'dot, dot, dot," Kupau said. "That shouldn't be there."

Bennett quickly flipped to a page of Kupau's version of the transcript and pointed out that he had used such a punctuation elsewhere in the transcript.

"Did you say 'dot, dot, dot, here?" Bennett asked.

Other "Major" discrepancies between the two transcripts Kupau pointed out included the use of "ah" instead of "uh."

Kupau told the jury he had no intention of lying while being questioned by government attorneys before a federal grand jury and at the trial of his two business agents and that "if I made a mistake. I was tricked by two fast-talking lawyers," One of the seven perjury charges stems from this testimony before the grand jury, which was investigating Maui union officials William Nishibayashi and Ralph Torres. Nishibayashi and Torres were convicted of perjury in connection with the Maui labor dispute at an earlier trial this year.

Kupau said he felt like he was being given "the third degree" before the grand jury by Bennett and another assistant U.S. attorney. He said the attorneys took turns "shooting" questions at him, sometimes interrupting his answer. He said there was no judge present and his attorney had to wait outside the hearing room.

The transcript of the grand jury proceedings does not indicate the tone of the questions asked by attorneys, including when they raised their voices, he said. The transcript, "really looks nice," Kupau said. "It looks like one play."

Kupau also is charged with lying in affidavits he submitted to the National Labor Relations Board which investigated a complaint fied by Mungovan Kupau said the affidavits were prepared by a union attorney based on information supplied by the Maui union office and not by him personally.

The decision to picket Mungovan's worksites was made by Nishibayashi. Kupau said he warned Nishibayashi to make sure that pickets were only informational and not organizational.

Kupau's attorney, Matthew Pyun, put a number of character witnesses on the stand to vouch for Kupau's honesty and truthfulness, including Donald Horio communications consultant for the state health department and former press secretary for the late Gov. John Burns.

[From the Maui News, Nov. 10, 1983]

DELIBERATION IN KUPAU CASE TO BEGIN TODAY: CARPENTERS UNION SECRETARY CLAIMS TRICKERY LED TO CHARGES

(By Robert McCabe)

HONOLULU—A federal court jury is scheduled to decide today whether Walter Kupau perjured himself when he denied, in sworn affidavits, that he had not participated in demands aimed at executing a union contract with a Maui construction firm.

Kupau, the financial secretary of the Carpenters Union, was indicted on seven counts of perjury by a federal grand jury in August following investigation of complaints by Walter and Cher Mungovan, owners of C&W Construction Company. He has been on trial since Nov. 1.

In testimony he gave on the witness stand Wednesday, Kupau rejected the charges while vigorously claiming that he has been "tricked by fast-talking lawyers" into making "misstatements" responsible for his trial.

However, the case against Kupau stems from action taken by the National Labor Relations Board (NLRB) which investigated the Mungovan complaints and determined that the Carpenters Union had acted "illegally" in its attempts to unionize the Mungovan firm.

Kupau is charged with lying to government investigators in four different proceedings involving sworn affidavits for two NLRB cases in federal court in 1981, in his testimony before a federal grand jury in 1982, and in his testimony at the trial in May of two Maui representatives of the union, Ralph Torres and William Nishibayashi. Those two were convicted on perjury charges, but remain free pending appeal.

The case against Kupau revolves around the picketing of Mungovan's job sites by the Carpenters Union in 1981 after Mungovan rejected efforts by Torres and Nishibayashi to recognize the union as the collective bargaining unit of his company's employees.

Because of the refusal, the Mungovans complained that the union representatives threatened them with violence and picketed their job sites for more than three months.

They complained also that the union maintained its picketing and other forms of harassment even after their employees voted in an NLRB election to remain outside the union.

As a result of the union action, the Mungovans have filed a civil suit against Nishibayashi and Torres, and other officials of the union whom they intend to identify later, charging them with responsibility for the collapse of their construction firm, emotional distress, and damage to their reputations.

Both Mungovans testified Monday in Kupau's trial when they repeated claims that the union destroyed their business.

Mungovan's appearance at the trial marked his first visit to Hawaii since his placement in the federal witness protection program following an attempt by two mystery men who tried to lure him away from a hotel room during the trial of Torres and Nishibayashi. Officials believe Mungovan's life is in danger because of his stand against the union. He has been given a new identity and established in a new, secret location.

Mungovan's testimony also concerned a telephone conversation he had with Kupau which he secretly taped.

The conversation in which Kupau is recorded as telling Mungovan that signing an agreement with the union is the only way to "settle the beef," (an obvious reference to the dispute between Mungovan and the union) was given much attention by both the defense and prosecuting attorneys.

Matthew Pyun, Kupau's lawyer, tried to press home the point that the government prosecutors had misinterpreted and wrongly analyzed Kupau's remarks through improper emphasis in which a meaning, other than that intended by the union chief, was implied.

Kupau himself objected to the government's transcripts of the conversation and other statements he made in the case, and claimed that the prosecutor's versions resulted in at least 64 errors that included omitted or added words, and misplaced punctuations.

He noted that in the transcript of the taped phone conversation, dots (. . .) had been added in several places.

"There are no dots on the tape," he said while on the witness stand.

His comment prompted the jury and the crowded courtroom to break out in chuckles, but Kupau said the inclusion of the dots is a "significant" example of the prosecutor's attempts to "get" him.

Kupau claimed also that the transcript makes it appear that he is "telling" Mungovan to sign up with the union when in actuality he had been asking questions.

However, Asst. U.S. Attorney Mark Bennett, who is the prosecutor in the case, sought to show that regardless of how the conversation was transcribed, it still proves that Kupau discussed a union contract with Mungovan.

But Kupau insisted that Mungovan initiated the conversation and that the call was made because Mungovan "was interested in settling the dispute" which Kupau claimed was started because Mungovan was paying his workers sub-standard wages.

In other testimony Kupau remarked that he sought to be "as truthful as possible" but that the inconsistencies and misstatements attributed to him were due to "third degree" treatment he was subjected to by his prosecutors.

"It was never my intention to lie since I wanted to shed as much light on the subject as possible and I made the misstatements because I was tricked by two fast-talking lawyers," he said.

Before Kupau testified, his lawyer called several witnesses, including Don Horio, press secretary to the late Gov. John A. Burns; James G. Westlake, head of the Oahu General Contractors Association; and John C. Craig, a Honolulu contractor, to testify that they regard Kupau as a person with a reputation for truthfulness.

However, during the rebuttal segment of the trial, prosecutor Bennett produced a collection of other witnesses who testified that they consider Mungovan to be an honest, truthful individual also.

Other rebuttal witnesses included Herman Adalist, a Wailuku construction consultant, who had attempted to intercede on Mungovan's behalf when the dispute started. It was Adalist who arranged Mungovan's phone call to Kupau.

According to evidence in the trial, Kupau testified that Adalist arranged the phone call because Mungovan wanted to discuss the issue of wages.

But Adalist testified that at no time in his contact with Kupau did the matter of Mungovan's labor wage rates come up.

"I have no doubt in my mind at all," Adalist said when asked by Bennett if Mungovan sought the discussion with Kupau to talk about wage rates.

"I never discussed labor wage rates with Mr. Kupau," he said.

Before the case goes to the jury today, Bennett indicated he may call one more rebuttal witness, possibly Nishibayashi, to the stand.

Nishibayashi's recall is, however, being opposed by Pyun. Judge Harold M. Fong was to decide this morning whether Nishibayashi would be allowed to testify again.

[From the Honolulu Advertiser, Nov. 11, 1983]

KUPAU VERDICT DELAYED UNTIL NEXT WEEK

(By Walter Wright)

The jury in the perjury case of Carpenters Union leader Walter Kupau deliberated for two and a half hours yesterday, then went home for the long weekend, postponing a verdict until at least next week.

Kupau is charged with six counts of perjury and one of giving a false statement for his repeated denials under oath that the union's picketing in 1981 was an effort to organize Maui contractor Walter Mungovan's company.

Two of Kupau's aides, union business agents William O. Nishibayashi and Ralph Torres of Maui, were convicted of similar charges last May and were sentenced to two years in prison, with all but six months of that time suspended. They are free pending appeal, and still working for the union on Maui.

If convicted Kupau could face up to 35 years in federal prison.

After seven days of testimony and argument, the focus in the case shifted yesterday to those who will render the verdict.

The jury is predominantly Caucasian women, the only exceptions being one woman of Asian extraction and two men, one black and the other Caucasian.

Defense attorney Matthew Pyun objected before the jury was selected that the original group of more than 100 prospective jurors was not representative of the community.

Before it adjourned for the weekend, the jury sent out a series of requests, for the judge's instructions; for permission to adjourn at 4:30 p.m.; for a blackboard, chalk and eraser; for masking tape; for a list of witnesses in order of appearance; and for a full transcript of the trial.

Only the transcript request was turned down; no transcript was available.

The government's key witness, Mungovan, was whisked out of Hawaii again on Wednesday by federal marshals at the completion of testimony.

Mungovan was placed in the federal witness protection program during the last trial because of fears his life was in danger. He has been given a new identity and relocated to the Mainland, where he is working in the construction business at an undisclosed place.

It was Mungovan who secretly tape recorded a 1981 telephone conversation with Kupau during his dispute with the union. The government says the tape proves that Kupau was trying to organize Mungovan's company and that Kupau's later denials were lies.

Kupau says he thought Mungovan was offering to sign an agreement to pay union wages without actually having a union contract.

But there was no evidence brought out during trial that anyone had ever signed such a limited agreement, and the prosecutor in the case, Assistant U.S. Attorney Mark Bennett, called that idea "a fiction."

Bennett said Kupau lied about the intent of the union's picketing during the trial of Nishibayashi and Torres. To admit during that trial that the union was really trying to organize Mungovan would have been "like somebody putting a gigantic iceberg in the path of the Titanic." Torres' and Nishibayshi's "ship would have gone down in a minute."

The prosecutor said that Kupau "admitted for one moment" before a federal grand jury that he had told Mungovan that signing a union contract was "the only way" to "settle the beef." That made Kupau's later denials inconsistent, proving one of the statements false, Bennett said.

The dispute between the union and Mungovan, Bennett said, "was like a poker game where Kupau and the union with 4,000 members hold all the cards." That was why Kupau could tell Mungovan on the telephone that there was "going to have to be some type of agreement consummated."

Mungovan taped conversations with union officials because he was "a drowning man, thrashing around in the water for a life preserver." He thought he could use a tape recorder to save his business; it was not to put words in people's mouths, but to get them "to say what they were in actuality doing," Bennett said.

Pyun insisted that the government had failed to prove that Kupau knowingly made false statement.

The labor leader, Pyun said, honestly believed the picketing of Mungovan was merely for informational purposes, as he had instructed.

Kupau was the victim of "third degree" questioning before a grand jury, Pyun said, and was "led astray all the way."

The government told Kupau when it called him before the grand jury investigating Torres and Nishibayashi that he was not a target of the investigation.

That, said Pyun, "is the spider telling the fly, 'Come in, don't worry—I've already had my lunch.' "

Bennett countered that "poor harassed Mr. Kupau" was no stranger to courtrooms and tough negotiations.

The defense attorney also attacked Mungovan, saying he was the kind of a man who tape recorded his clients and business and union persons, "not a man whose testimony you can believe."

Mungovan, Pyun said, lied about his dealings with others, lied about his bonding capacity, and tried to "set up" Kupau.

Pyun said that to challenge Kupau's reputation for honesty, the government called one witness, "a cop who says Kupau's reputation for honesty is bad." But, Pyun insisted, "you are not going to get many police officers who will say anyone's reputation is good."

Pyun was referring to Honolulu Police Detective Michael Orian, who testified that Kupau's reputation in the community was that "he is not a very truthful person."

Orian said he had known of Kupau since may 31, 1970. That date referred to an incident in which Orian responded to a domestic quarrel at Kupau's home. Orian said that at the time Kupau struck him, kicked him and threatened to shoot him. Kupau denied the charges at the time, and a complaint of assault and battery later was dismissed by a judge.

[From the Honolulu Advertiser, Nov. 18, 1983]

KUPAU GUILTY ON SIX COUNTS, FACES MAXIMUM 30 YEARS

(By Walter Wright)

Walter Kupau, head of the Carpenters Union in Hawaii and president of the AFL-CIO State Federation of Labor, was convicted yesterday by a federal court jury of six counts of perjury.

Kupau, 47, faces a maximum of 30 years in federal prison and fines totaling $36,000 when he is sentenced Jan. 9.

The 10-woman, two-man jury found Kupau not guilty of a seventh perjury count in which he was charged with making a statement at the trial inconsistent with this grand jury testimony on the same subject.

Kupau was released on $10,000 signature bond.

"No comment, no comment, no comment," Kupau told reporters as he strode firmly out of the Federal Courthouse, an aide brushing reporters aside. But Kupau indicated he would have a lot to say later.

The conviction does not automatically bar Kupau from holding his $60,000-a-year job, as financial secretary of the union, but it would be a violation of current national AFL-CIO policy for him to remain in office. The conviction also raises questions about Kupau's political future with union elections scheduled for next year.

Kupau was convicted of lying when he denied under oath that picketing of Maui contractor Walter Mungovan in 1981 was intended to organize his company.

Mungovan himself is in hiding in the federal witness proection program, but his wife, Cher, was in the courtroom when the verdict came in. Obviously pleased, Mrs. Mungovan still could not keep tears from streaming down her face as she left the courtroom.

"It just upsets me what my husband had to go through to find Kupau guilty after three years. But if we had to do it over again, we'd do it again, because this kind of thing has to stop somewhere," she said.

"I hope the verdict in this trial and in previous trials and maybe the sentencing in this trial will deter other union leaders from doing the same thing . . . I'm just glad that we were able to, at least for right now, put a stop to this.

"I'm just glad that justice has been done." she said.

Assistant U.S. Attorney Mark Bennett, who prosecuted the case, praised Walter Mungovan as "a courageous person who was willing to fight for what he believed in." But asked what impact the verdict would have, Bennett insisted that the issue was perjury, not labor relations.

"I don't think the verdict should have any impact on unions and management. What the verdict should have an impact on is people who would come into federal court and think about perjuring themselves, because that's what really the case is about. It's about perjury; it's not about union-management relations," Bennett said.

Bennett's comments contrasted with his assertions in a sentencing memorandum in the case of Kupau's aides, Maui business agents William O. Nishibayashi and Ralph Torres, earlier this year.

Nishibayashi and Torres each was convicted of four similar perjury counts in a related case last May.

Bennett said then that the business agents were "the driving forces behind the destruction of a man, a family, a business and an ideal." He said the business agents threatened, bullied and shut down Mungovan.

And, the prosecutor said then, the business agents' actions were "part of a master plan, a plan that had existed before Mungovan came into the union's sights, and a plan that appears to continue to this very day."

Bennett said after the verdict yesterday that the Kupau case was different from the previous case because the union business agents had repeated direct contacts with Mungovan, while Kupau's only direct contact with Mungovan was in one telephone call.

But the jury clearly did not accept Kupau's defense that he honestly believed he was telling the truth about the matter and that he didn't know everything that Nishibayashi and Torres were doing.

Kupau falsely declared in affidavits filed in a National Labor Relations Board case that the picketing would have stopped if Mungovan had conformed to union standards and that it wasn't an attempt to organize the company.

Later, in the federal court trial of Nishibayashi and Torres, Kupau falsely denied he was talking about a union contract or union agreement in a telephone conversation with Mungovan. Mungovan submitted a tape recording of the conversation at the trial.

The NLRB affidavits accounted for three of the perjury convictions; the testimony in the Nishibayashi-Torres trial accounted for the other three.

None of the jurors would discuss the verdict with defense lawyers or reporters when they left the courtroom yesterday afternoon.

One juror indicated that the panel simply started with the first of the counts and worked its way through all seven. She said jurors "had no idea" that their deliberations were among the most lengthy in recent federal criminal cases.

Federal Judge Harold M. Fong told the jurors that despite their prolonged deliberations, he never feared they were not going to reach a verdict. The questions the jurors asked the court during five days of deliberations indicated, Fong said, that they "made a very systematic, methodical" study of the charges and the evidence.

Fong denied a last-minute motion for mistrial by defense attorney Matthew Pyun. Pyun objected to the judge's decision to allow the jury to consult a dictionary during deliberations and also said the jury had been deliberating too long. He also objected to the use of informal telephone conferences with counsel, rather than formal proceedings, to give both sides' views on how other jury questions should be answered by the court.

Reporters crowded around Kupau and Pyun in a courthouse elevator and asked if there would be an appeal. "Ask the boss," said Pyun. "Ask legal counsel," said Kupau.

Pyun said a decision on appeal would be made "very shortly," but noted an appeal cannot be filed until after sentencing in January.

Carpenters Union's president Sam Mamizuka told The Advertiser that the union "definitely will appeal" Kupau's conviction "We have nowhere else to go but up," he said.

Kupau's wife, Daveny, and two of his sisters were in the courtroom when the verdict was returned. One of the sisters, Ellie Kupau, said she was surprised at the verdict and that she had felt that the seventh count against Kupau was the crucial one.

"I'm sad," said Miss Kupau, who sat through the entire trial "to think that—he's worked very hard all those years. I know he would not be willing to give up something he's worked hard for all his life just for a couple of words" in an affidavit or at a trial.

Kupau's close friend, labor leader Ivan Naiwi, was in court for the jury verdict and said later: "It's an injustice, in my opinion.

"I think in a trial like this, Kupau should have had full opportunity to exercise his freedom of speech."

[From the Honolulu Advertiser, Nov. 15, 1983]

KUPAU JURY TO CONTINUE DELIBERATIONS

The jury in the Walter Kupau perjury case will reconvene this morning after deliberating all day yesterday without arriving at a verdict.

Kupau, financial secretary of the Hawaii Carpenters union, is accused of lying in his denials that the union's 1981 picketing of contractor Walter Mungovan was an attempt to force Mungovan to sign a contract.

Jurors yesterday asked to listen again to tape recordings of Kupau aides William O. Nishibayashi and Ralph Torres.

The recordings, made secretly by Mungovan during conversations with the union officials, were offered by the prosecution as evidence that the union was trying to force Mungovan to sign.

Nishibayashi and Torres were convicted of perjury in a related case in May.

The jury began deliberations at 2 p.m. Thursday at the end of seven days of trial. With time off for the long holiday weekend, the jurors have been in actual deliberations for about nine hours so far.

[From the Honolulu Advertiser, Nov. 16, 1983]

KUPAU JURY STILL DELIBERATING

There was still no verdict in the Walter Kupau perjury case last night as the jury recessed after the second full day of delibertions.

Kupau, financial secretary of the Hawaii Carpenters union, is charged with seven counts of perjury for his denials that the union's 1981 picketing was an attempt to force Maui contractor Walter Mungovan to sign a union contract.

Jurors yesterday listened again to a tape recording Mungovan secretly made of a telephone conversation with Kupau in February 1981.

On Monday, jurors reviewed Mungovan's tapes of his conversations with Kupau aides William Nishibayashi and Ralph Torres, who were convicted of similar perjury charges earlier this year.

The jury of 10 women and two men will resume deliberations today.

[From the Honolulu Advertiser, Nov. 19, 1983]

AFL-CIO SILENT ABOUT KUPAU

(By Charles Turner)

National AFL-CIO leaders apparently were meeting with attorneys yesterday to decide what to do about Walter Kupau's conviction on perjury charges.

Kupau, president of the Hawaii State AFL-CIO, was convicted Thursday on six of seven counts of a federal grand jury indictment alleging he lied about the Carpenters union's picketing activities on Maui.

Kupau is the $60,000-a-year business representative of the Carpenters in addition to being the unpaid president of the Hawaii labor federation.

Murray Seeger, the AFL-CIO's national director of information, told The Advertiser that attorneys in Washington would be consulted before a statement could be made about Kupau's future with the AFL-CIO.

Seeger said under a policy laid down by AFL-CIO President Lane Kirkland, "if a person is indicted, he must step out of office."

"If convicted, he steps out of office without pay," Seeger said.

However, Seeger added, the national AFL-CIO is "left in a situation where he's not paid by the AFL-CIO." He said it might take time to get a clear picture.

Kirkland wrote to Kupau in September, shortly after Kupau's indictment on the perjury charges, and asked the Hawaii labor leader to "take an immediate leave of absence . . . pending the initial disposition" of his case.

But Kupau defied Kirkland and was supported by the delegates to the Hawaii AFL-CIO convention, who re-elected him to another two-year term (he has served as federation president since 1969).

Kupau has declined to comment since his conviction Thursday.

[From the Honolulu Advertiser, Nov. 18, 1983]

KUPAU ALWAYS CONTROVERSIAL—AND FULL OF FIGHT

(By Walter Wright)

"The only thing I'm experienced in is honesty," Walter H. Kupau said in a 1969 interview when, at the age of 33, he was elected head of the Hawaii State Federation of Labor.

It was one of the peak moments of a meteoric career for a rough and ready Kalihi man who had emerged as one of the most articulate local union leaders in the state.

From that moment, Kupau has rarely been without words on any topic that touched organized labor or Hawaii politics.

So there was any irony yesterday when the same man, after 14 years at the head of the state federation and five years leading his own union, Local 745 of the International Brotherhood of Carpenters and Joiners, was reduced to a "no comment" after having been found guilty of lying.

Even his natural enemies, including a contractor's association official, were called to testify as character witnesses at his trial, saying that they knew Kupau to be a man of his word.

Not that his life—personal, political and otherwise—has been without controversy.

The ninth of 11 children, son of an Army officer, Kupau attended St. Louis High School, graduated from Lowell High in San Francisco and did three years with the Army Engineers before he was booted out with an undesirable discharge, he says, because he wouldn't tolerate the treatment of blacks by the military and because of a drinking bout.

He returned to Honolulu to become a laborer in 1957.

He soon took up carpentry, a trade he says he learned as a child at the side of his father, who worked in construction after retiring from the Army.

Kupau joined the Carpenters Union in 1960 when he was working on one of the first high-rise projects in Waikiki, the Colony Surf.

One of the first public mentions of Kupau was a news account about a 24-year-old Rose Street man who who led police on a wild chase through downtown Honolulu in the spring of 1961, ending up with a 30-day jail sentence for careless driving, and being fined $25 and losing his license.

It was the beginning of a public record marked on the one hand by appointments to lofty state commissions and boards and, on the other, by arrests for brawling with police.

His father was a close friend of former congressional delegate and later Gov. John Burns. Burns' mother was Kupau's godmother, and the Burns family at one time moved into the old Kupau family home when the Kupaus left, family members say.

Kupau never forgot his ties with the Burns family, and fought hard for the Burns wing of the Democratic Party over the years until he made his relatively recent truce with Frank Fasi, whom he backed for governor last year.

Kupau was named a job steward and president of the stewards council in 1965, and the next year joined the staff of the union to coordinate a political program.

After the 1966 elections, Kupau began his work in organizing, particularly in the dry wall industry. A year later, he became active in negotiations in talks that led to the construction industry strike that year, learning some of the ropes from top-notch labor lawyer Ben Sigal.

In October 1967, he was hired as administrative assistant to the Carpenters' financial secretary, Stanley "Maui" Yanagi.

The same year, Kupau was elected vice president of the state federation. In 1968, Kupau bolted from a labor effort to dump Matsuo Takabuki from the city council and campaigned for Takabuki and against Fasi, who was running for mayor.

Kupau's election to lead the state federation a year later was a victory of the pro-Burns faction in the AFL-CIO and a slap at the followers of Burns political rival, Lt. Gov. Tom Gill. The pro-Gill faction was dominated by Akito "Blackie" Fujikawa of the International Brotherhood of Electrical Workers, which withdrew in a huff.

In 1969, Kupau and the union came out for rent control and blasted Fasi for resisting efforts to eliminate rat-infested tenements "that should have been replaced a decade or so ago."

Kupau, described as a young turk and a firebrand, co-chaired a committee to save Queen's Surf from Fasi's demolition program in 1969.

He organized an apprenticeship program in Waimanalo to fight the notion that young men there were roughnecks who wouldn't work.

He fought the city's proposed construction moratorium in Waikiki.

Named by Burns to the State Contractors License Board in 1970, Kupau pushed for Burns politically and was accused of railroading endorsements for the Committee on Political Education (COPE) the same year.

Kupau's political beefs mixed with his personal ones that year when Fasi made charges that newspapers were covering up a domestic quarrel that ended with Kupau being accused of assault and battery on a police officer. Although Kupau was later acquitted, the event survived to haunt him even to his perjury trial, when the officer involved appeared as a prosecution witness to testify that Kupau's reputation for honesty was not a good one.

In another political row, Kupau accused state Republican gubernatorial candidate Sam King of the lowest form of politics, "several degrees below McCarthyism," over King's suggestion that state Sen. Larry Kuriyama might have not been killed if John Burns took organized crime seriously.

King responded that Kupau was a "strong-arm man" and was trying to divert attention from the problem of organized crime.

Years later, federal Judge Sam King would order Kaupau installed as president of the Carpenters Union, upholding his election to that office against legal challengers.

Kupau apparently worried about violence as a result of his labor activities and for a period of time carried a snub nose revolver. In 1972, he lost his permit to carry a gun after a futile investigation into whether he was inciting striking refuse workers to violence.

The following year, 1973, Burns named Kupau and other community leaders to a commission to study the Islands' economy.

After Burns' death, Kupau in 1974 at first backed Dave McClung for governor in the primary, but then closed ranks behind acting Gov. George Ariyoshi. For his trouble, he was named in a pack of "labor barons" who Republican candidate Randolph Crossley said were "running the state."

Kupau was also a regular political "issue" within the Carpenters Union whenever anyone tried to challenge his boss, Yanagi, for control. Rivals frequently complained about Kupau's salary and "expensive car" as Yanagi's assistant.

In 1975, Kupau himself challenged Yanagi, but lost by a 2-1 margin.

His sister, Jessica Kirk, fared better in union politics that year, winning election as president of the Hawaii Federation of Teachers.

In 1976, Kupau was still fighting Fasi and backed Lt. Gov. Nelson Doi for mayor.

He was also out of work, and early the next year was involved in another fracas with police outside his Foster Village home.

Kupau charged police brutality, the police charged assault; Kupau's charge was found to be unsubstantiated; Kupau himself was found guilty.

The same stormy summer of 1976, Kupau was busy warning the community about the infiltration of labor unions here by orangized crime, naming Henry Huihui, former organizer for the building trades council, as a "muscleman."

Huihui had gone into hiding after the slaying of Joe Lii, head of the Inland Boatmen's Union, and Kupau was saying that he expected to be a target for Huihui, who Kupau said had tried to move into the electrical workers and the carpenters unions to take control.

Kupau was already planning to run again, against his former boss, Yanagi, when Yanagi died in August 1977 of a heart attack. Nearly a year later, Kupau squeaked into office 94 votes ahead of Stanley Ito, the incumbent treasurer.

He promptly vowed to step up union organizing activity—the kind of activity that the government said he was involved in during the dispute that led to the perjury charges this year.

It was in 1979 that Kupau reorganized the union's Maui office, hiring William Nishibayashi to run it and provoking demonstrations against that move by hundreds of carpenters.

In 1980, Kupau moved away from the Burns wing of the party, disavowing Ariyoshi. Burns, Kupau said, was a governor, while Ariyoshi was "a jackass."

The same year, Kupau took the Carpenters out on strike for four weeks to get a 47 percent wage and benefit boost over a four-year period.

Later that year, Kupau personally took a hand in a strike by eight KITV television reporters, urging boycotts of the station.

Kupau was re-elected head of the Carpenters by a 2-1 ratio in 1981, turning back a challenge by union president Mayasuki Yamamoto.

By that time, his union was already deeply embodied in the dispute with Mungovan which led to the federal court verdict this week.

[From the Honolulu Advertiser, Nov. 18, 1983]

WANTS FAMILY TO JOIN HIM: BUT MUNGOVAN TO STAY HIDDEN

(By Walter Wright)

Walter Mungovan, the Maui contractor who stood up against Hawaii Carpenters Union leader Walter Kupau, says he will have to stay undercover in a federal witness protection program "forever, because some of the 'big boys' never forget."

In an exclusive advertiser interview, Mungovan said he wants his wife, Cher, 31, and her son, Ian, 12, to come into hiding with him after she pushes their civil lawsuit against the union to a conclusion.

The Mungovans contend in the suit that Kupau and the union destroyed their company, C & W (for Cher and Walter) Construction, and tore their family apart.

When Mungovan was first informed of the verdict by telephone last night, there was a pause, and then the sound of a champagne cork popping. But the celebration was a short one, conducted somewhere on the Mainland by a man afraid for his life.

Mungovan, 36, a strapping 6-foot-6 combat veteran of the Vietnam War, was rushed into hiding last May by U.S. marshals for fear that his life was in danger.

He was returned to Hawaii three weeks ago as the key prosecution witness in Kupau's perjury trial and then was whisked out of the state after his testimony two weeks ago.

Interviewed by The Advertiser through an intermediary, Mungovan said he was grateful for the outcome of the trial.

"It's a great day for the American judicial system," Mungovan said when informed of the verdict. "I hope the sentencing is severe enough to teach Mr. Kupau and all the other big union leaders that there is a Bill of Rights and they can't destroy a man and his business and then lie to cover it up."

Mungovan strongly criticized the sentencing in the previous perjury, conviction of Kupau aides William Nishibayashi and Ralph Torres, Nishibayashi and Torres, both Carpenters Union business agents on Maui, were each sentenced to two years in prison, but all but six months of their sentences was suspended.

"I think the verdict was just," said Mungovan, whose testimony was crucial in that case also. But, he added, "the sentencing was a mockery of the justice system.

"It's obvious to me, and everyone involved in this case, and also other contractors in this state, that these two men obviously conspired with others to commit perjury with the sole purpose of destroying C & W Construction," Mungovan said.

"Their sentences should have been a minimum of three years—the same amount of time they've put me, and my family, through hell."

Mungovan said he thought the verdict and sentencing in an earlier case, that of concrete company dispatcher Dennis Yoshida, was fair. Yoshida was sentenced to six months in prison for denying under oath that Torres asked him not to deliver concrete to Mungovan's job sites.

The perjury charges in ——— Yoshida. Nishibayashi and Torres cases all arose out of the sworn statements the ——— made in connection with a National Labor Relations Board case.

The NLRB had charged that the union's picket line was ——— informational as claimed. It was designed to force Mungovan to sign a union contract.

Kupau was convicted for similar sworn statements in connection with the NLRB case ——— for his testimony at the Nishisbayashi-Torres trial.

Mongovan's testimony was critical because he secretly tape-recorded some of the conversations he had with union officials. The tape recordings were admitted as evidence.

Mungovan revealed in the interview that there were three major factors in his decision to enter the federal witness protection program.

There were, he said, death threats, then "a reported contract on my life." and finally, "men coming to my hotel room trying to abduct me."

Mungovan had earlier installed surveillance equipment around his Kihei home in response to the first threats. With the help of the FBI, he obtained a permit to carry a gun, at first a .357 Magnum and then a 45 automatic.

In January and February, Mungovan was on the Mainland under FBI protection, until he was brought back for the trial of Yoshida in March, and then again for the Nishibayashi-Torres trial in May.

In the midst of the Nishibayashi-Torres trial, at 1 p.m. on the May 13, two men knocked on the door of Mungovan's room at the Hilton Hawaiian Village Hotel. His presence in the hotel was supposed to be a closely guarded secret; nevertheless, the men had found his room.

The two identified themselves as FBI agents and asked that Mungovan come with them to review some documents in connection with the trial. The FBI was called immediately, but the two suspects were gone by the time agents arrived.

Mungovan was taken into hiding immediately.

He has since been relocated somewhere on the Mainland, where he lives under an assumed name with a complete new identity furnished by the government. He is working again as a carpenter, sources said.

Mungovan told The Advertiser he never thought he would end up in the witness protection program—"not until it happened."

He said living under the program is "very difficult." He has moved or been relocated several times, usually in an effort to find work in the construction business, in which he has been earning between $8 and $10 an hour.

He has been obliged to avoid a number of "danger states," such as California and New York, where he has previously lived and worked, lest someone recognize him and reveal his true identity.

But, he said, "it's the only recourse left for an honest man who stands up for his country, fights for what is 'right' and honest and truthful, and then finds his life is in jeopardy because of it."

He said he wants his wife to join him in the program, assuming a new identity herself, "after she gets done with what she had to do.

He was referring to Cher Mungovan's efforts to raise money to prosecute their suit against the union and her campaign to get labor laws changed.

"The lawsuit can't continue if we are both on the witness program, and the lawsuits is the only chance we have left to recoup any of our losses," she said.

Cher Mungovan says she has never felt she was in as much danger as her husband, because it is his testimony—not hers—which has been critical to the cases in Hawaii. She said she will join the program "when I'm finished with my work."

"I don't like the idea of either Walter or I having to be in that position, but we haven't much choice," she said.

"I'm not going to live without him forever," she said. "It's bad enough right now."

[From the Maui News, Nov. 24, 1983]

BATTLE SITE OVER UNIONS RETURNS TO WASHINGTON

(By Robert McCabe)

HONOLULU—Cher Mungovan, the scrappy Maui woman whose battle agaist the Carpenters Union of Hawaii has resulted in the virtual destruction of her family and business life, intends to continue her fight for changes in federal laws "so that no other families suffer the devastation my family has had to go through."

In a press conference Wednesday, Mungovan announced she will return to Washington to continue her almost single-handed campaign to have the antiextortion Hobbs Act amended so that it will also provide for federal prosecution of labor violence and other union excesses.

But she said she is in "desperate" need of community support and financial assistance if her struggle is to achieve its desired ends.

Mungovan's struggle for improvement of the Hobbs Act developed when she discovered that she and her husband, Walter, had little recourse in seeking an end to problems they experienced because of a dispute with the Carpenters Union.

Under existing conditions of the Hobbs Act, union violence is not considered a federal matter if it involves a labor dispute.

Mungovan began her fight for amendment of the act after her husband decided to enter the federal witness program, which involves his assumption of a new identity, his relocation away from Maui and separation from his family.

Her husband entered the program because the Justice Department believes his life is in danger, his wife said.

She claimed that she and her husband have received death threats and that both are in "a constant state of fear" because of threatened reprisals for the stand they took in opposing "union gangsterism."

The troubles the Mungovans are experiencing first developed in 1980 when they rejected overtures by agents of the Carpenters Union to sign a union contract. This refusal resulted in the picketing—for four months in 1981—of sites where their C&W Construction Company was building custom homes.

Because of the manner of the picketing, and because of incidents that occurred during the demonstrations, complaints were filed with the National Labor Relations

Board. These complaints ultimately resulted in perjury indictments—and the convictions—of three union officials. They include union leader Walter Kupau and his two Maui business agents. William Nishibaysahi and Ralph Torres.

Kupau was convicted by a federal jury Nov. 17, following a trial that began Nov. 1. He faces maximum penalties of $36,000 in fines and 30 years in prison when he comes up for sentencing Jan. 9.

Nishibayashi and Torres were brought to trial in May but both have appealed their convictions. Each received a six month jail term, which has been delayed pending the outcome of their appeal action.

Cher Mungovan said she shed tears of relief when Kupau was found guilty.

"I feel justice has been done, even though the convictions do not deal with the issue of gangsterism that we were subjected to, or restore our peace of mind, or return to my family the business and life we were trying to build on Maui," she said.

"But I am still happy over the outcome because it may encourage other victims to resist the unfair practices and bullying that appears to be the modus operandi of some unions when they don't get their way," she added.

She said also that the perjury trials of the union officials "serve as an example to everyone in this state that if they lie in a federal proceeding, the government will prosecute . . . regardless of whether that person holds a union card or not."

She said she will not abandon her effort to end the type of union militancy her family has had to contend with and that she will also pursue civil lawsuits she has filed against the union for the losses and deprivation her family has suffered.

"Criminal proceedings are compensation to the general public, not specifically for an individual. Hence the reason I cannot join my husband at this time on the witness program. With both of us in the program, the lawsuits we filed against the union and its business agents earlier this year could not continue," she said.

"It is important for employers all over the country to realize that we have filed a precedent-setting action; if we are successful, it will enable employers to hold unions and their leaders responsible for destroying a business and people's lives through illegal secondary boycotts, conspiring with suppliers to cut off materials and trying to extort a union contract by these means," she added.

But, she said that in order to continue her efforts, she is in desperate need of community support.

"We have lost everything, and my legal fees to press this suit and defend the union's unfounded countersuits have already reached $50,000, and I have been told that the expected costs will be another $100,000 in the next eight months," she said.

She claimed that one reason why her family and business "are devastated" is because they received little or no help when their dispute with the union started.

"No one stuck by us. People were afraid to hire us. Architects wouldn't let us bid on jobs. Others who let us bid wouldn't award us the jobs when we came in low bidder and provided a cash bid bond; there was also evidence and witnesses to bid-rigging," she complained.

She claimed also that "everyone seemed to agree with our stand . . . as long as they didn't have to stick their necks out."

Now, however, she said that because her family does not have a business left to generate any income, she has had to start a legal defense fund "and must ask the people of the community that now support us to please help by donating any amount they can afford."

Such contributions should be mailed to the Mungovan Defense Fund, in care of P.O. Box 365, Kihei 96753, she said.

"The donations are so desperately needed because I am not fortunate enough to have an endless cash flow that rightfully belongs to others to pay my attorneys, like Mr. Kupau and his business agents have . . . and I no longer have my husband here to pursue this case with me," she said.

She claimed that she knows of "many employers" who want to send her donations but that she has been told "they are afraid to do so for fear that Mr. Kupau might find out who they are and retaliate in some way."

"What is it about this man (Kupau) that everyone is so afraid of him?" she asked.

"Surely all the energy that is now directed at being afraid could be put to better use; by pulling together and putting it towards something positive that will benefit all the employers in the business community, there could be some significant changes made in this state," she said.

"I am sure if I, the wife of a contractor, can go to Washington, D.C. alone and generate a Senate judiciary hearing, all employers can stand together and stick up for their rights to live and work here without being intimidated and harassed by certain members of the unions," she challenged.

[From Ka Huliau, November-December 1983]

AFL-CIO PRESIDENT WALTER KUPAU: FROM CARPENTER TO LABOR LEADER

State AFL-CIO President Walter Kupau has always been a controversial figure in Hawaii's labor movement. Recently, the Carpenter's Union leader became the target of federal perjury charges stemming from a case in which a non-union Maui contractor claimed that the union had tried to force him to accept a union contract.

Never the kind of guy who minces words, Kupau had blasted his prosecution as another example of the Reagan administration's union-busting campaign. In the following interview with Ka Huliau, Kupau discusses his rise as a union leader and presents his frank and uncompromising views on labor in the Islands today.

(By Clinton Maeshiro)

Ka Huliau. How did you get involved with the labor movement?

Kupau. I voted for the Carpenters Union when I was a carpenter with Nordic Construction in 1960. After I joined the union, I was appointed shop steward and elected chairman of the shop stewards' council in 1965.

In 1966, I was hired on the staff, primarily to coordinate a political action program within the Carpenters Union to work with the state AFL-CIO. It was supposed to be a two month job, but I stayed on and was assigned to organize dry wall workers in the construction industry.

After our strike in 1967, I was appointed administrative assistant to the financial secretary in the Carpenters Union. I served in the position until 1975, when I ran for office against the incumbent. I lost and I was out of office for three years. But I came back and ran again in 1978.

Ka Huliau. What did you do during those three years?

Kupau. We were black-balled from the union; we couldn't get union jobs. It was done very quietly. You'd get a referral slip and, all of a sudden, the boss would change his mind and wouldn't want to hire you. After collecting unemployment for six or seven months, I went to work as a supervisor for several months and then went to work part-time as a housing manager for the Waimanalo Resident Housing Development Corporation. I stayed in that position for two years until I was elected financial secretary of the Carpenters Union in 1978.

Ka Huliau. Why do you think you lost the first time you ran?

Kupau. I ran against Stanley Yanagi, a long-time incumbent who had served for over 20 years. Actually, I had been his assistant and he told me to run because he was going to retire. I didn't know that there were factions outside the union influencing him to change his mind.

He had diabetes and he didn't want to run, but I think certain people with their fingers in the union's affairs wanted him to run.

By the time I found out, it was too late. It was like running against a stone wall. We lost three to one.

Yanagi passed away from a heart attack in 1977. He was going to retire anyway; he was well over 65. After he died, the leadership who really ran the union—Yanagi had just been a figurehead—put up their best candidate against me but I won by 90 votes in 1978.

Actually, I'd won by 94 votes. But they asked for a recount and the recount showed I'd won by 90 votes. Then they appealed to the International. I had a letter from the International confirming I was eligible to run; after I won, the International sent another letter claiming I was ineligible.

The whole case ended up in federal court, which upheld my election. There were several motions in district court but we won all except one decision. The Labor Department was involved, too. Finally, the U.S. Circuit Court of Appeals ordered the Labor Department to drop all action against myself and the union.

Ka Huliau. At that time, were you considered an outsider coming in?

Kupau. They didn't want me stepping on people's toes and upsetting the apple cart. There were people outside of the union, like the attorneys who didn't want me around because I was going to fire 'em all.

Ka Huliau. Are you free to talk about these conflicts of interest?

Kupau. You're damn right; it's all a matter of court record. When I took office, I fired the law firm of Shim, Sigal, Tam and those guys. They had nothing to do with this union after I was elected. All they were handling was the case for the guys that I beat.

After the International said I didn't have a right to appoint trustees to the various trust funds—pension, health and welfare—we amended our union contract in 1981 so we could appoint whom we wanted. The law firm was still involved with our trust funds so I fired them again. I got 'em out of the whole carpenter union business.

There had been interference with the operations of the local union. If lawyers are in an advisory capacity, they should stay in an advisory capacity. After I won, I caught (attorney) Alvin Shim holding a private meeting in a union office. I called him and said "I know about your meeting." "Okay, okay, okay—" that's all he could say; I nailed him. I could have taken him to a judicial panel.

Ka Huliau. Why would a law firm want to control the union?

Kapau. Our pension fund was worth about $50 million or $60 million. Now it's worth about $100 million. Although we have investment consultants, an attorney's opinions influence the actions of the trustees. Trustees want to act prudently so they naturally tend to follow the attorney's advice.

To be an advisor of a fund having that much money carries a lot of weight in this town. If a firm is on retainer, there are monetary benefits—at least $75,000 a year from our union and trust fund. And I'm not talking about any related wheeling and dealing.

Ka Huliau. How is the Carpenters Union leadership today?

Kupau. I have no problems, now. During my first three years, I had problems because my opponents had a six to four majority on the board. Although I had problems, we got a whole lot of shit going. We established a legal plan in this office that no union in the U.S. or Canada has, with two full-time staff lawyers taking care of members' problems. Effective March next year, members won't have to pay anything (extra) for this service because it will come out of their dues.

We negotiated a new contract in 1980 which was far superior to what anybody else had seen. Everybody thought we were crazy because we went on a 30 day strike. But we proved our point. Now all the other unions are in trouble trying to negotiate while we're sitting pretty in the fourth year of our contract.

But every fourth Saturday of the month I was being outvoted on the executive board. So you know what I did; I went around to the members. We organized the rank and file and got people coming out to meetings. In our 1980 convention, we passed a whole bunch of resolutions by unanimous vote because only four people out of 235 delegates would vote against us.

That showed them where the power was—the power was in the rank and file. It was only a matter of motivating members to try to clean up this situation so we could move the union forward. In 1981, we swept those guys out of office in the elections.

Things are running more smoothly now. I wish we had two people on the board who would object to more things because it gets to be routine. We need people constantly criticising, constantly asking questions about policy, because if you don't, then you get complacent.

Ka Huliau. I guess you don't want to be surrounded by only "yes men."

Kupau. No, I like that. But I also like dissent. It gives you an opportunity to look at the other side of the coin. They may not be right but if you don't look at the other side, then you're in trouble.

Ka Huliau. According to the Star-Bulletin, about 25 percent of all construction is being done by non-union contractors.

Kupau. I've had about 1,400 people unemployed and about 700 of them went back to work in the past year. When the Star-Bulletin talks about 25 percent of the work being non-union, they're talking about building garages, fixing screens, constructing single homes. They're not talking about big commercial projects.

In the federal sector, there's problems with the Davis-Bacon Act. Contractors from the mainland are often the low bidders for federal contracts but they're cheating and violating the law, paying less than what the federal government requires. We've been filing complaints but the federal government still isn't enforcing the law.

Contractors are funny; they have this code of ethics of sticking together and not squealing on each other. "Just let these assholes over here do it" that's the way they figure. But they're losing a lot of work because of themselves. If a competitor is cheating and paying something like $3 less in wages than allowed, a contractor will call us to turn the guy in and we catch all the heat up front.

Last year, there was a 27 percent drop in work-hours but it doesn't mean that the non-union hours increased. We're not interested in the guys who are building one or two houses each year; they're just making a living. It's those full-fledged contractors that we would like to see pay the same rates as everybody else, to equalize competition so our people can work.

KA HULIAU. So 25 percent of the work being non-union is not a problem?

KUPAU. It's a problem but I'm not going to let it bother me. I can't change it.

KA HULIAU. Didn't you have a picket out at Diamond Head against a non-union contractor?

KUPAU. Yeah, but we weren't picketing because he was non-union. The contractor here had bid successfully on a state job and state law requires a certain rate of pay for the crafts on state or county projects. You have to pay carpenters over $15 an hour.

We found three carpenters on the job. One was being paid $12 per hour with no fringe benefits; two other guys were getting $10 per hour with half of the medical costs, no pension, no annuity and no vacation. So we picketed the company and turned it in to the State. The State ain't done shit. We're waiting to see who is going to enforce the law. Now there's suits filed by contractors.

KA HULIAU. What can the State do?

KUPAU. The state can enforce the law, stop final payment, impose fines and ban the firm from bidding on any more state jobs. And you know what happened? We turned the contractor in to the County because they had bid on another project in Wahiawa, and they're going to get that job, too! And they're going to do the same thing again.

We have the proper laws on the books but the State just dosen't want to move. I sent a letter to the governor and five different agencies and I still haven't heard anything.

KA HULIAU. Why doesn't the State move on it?

KUPAU. Too fuckin' lazy. The other main reason, I think, is the general attitude of this President's administration, the anti-union attitude of the federal agencies which has seeped down into certain state agencies.

KA HULIAU. You've stated that the labor movement should try to get President Reagan out of office. But we've got a Democratic governor in Hawaii and you still have problems.

KUPAU. You'll have problems as long as there's a Republican president. I don't care how many Democratic governors you've got; they still gotta play ball with the Republican administration. They're busting unions all over the country. And the general feeling seeps down into certain areas like OSHA at the state level.

For example, we turn in a non-union contractor for allowing a guy who's standing barefoot in the water to plug in an electrical cord. We had the pictures. You know what OSHA said? "We don't want to do nothing; there's a conflict of interest because the guy is non-union." We asked, "What's the conflict of interest? You're going down to our union contractors and they're getting fired while the non-union contractors are getting away free."

This is the State's OSHA. It's the general attitude which is closely aligned with the Federal government, with the Federal OSHA.

KA HULIAU. Why is the federal government prosecuting you for perjury?

KUPAU. I don't know. When we find the answer, we'll let the public know. We do know the law is not being applied equally. Anti-union witnesses lied on the stand. The U.S. Attorney's office knows it; the FBI knows it. In fact, an FBI agent went out and solicited statements which he knew were untrue to be submitted in a sentencing report. But the U.S. Attorney is not going to prosecute others when he's looking good prosecuting union people.

I've made this statement before and I'll make it again: when any citizen in this community, especially a non-union contractor, makes an unclear statement, it's just an unclear statement; but if any citizen in this community who carries a union card makes an unclear statement, that's perjury. And that's exactly what the fuck is going on here.

KA HULIAU. How are You going to prove it?

KUPAU. Well, everything has its time; every thing will come full circle. Now, we have to take care of some cases in court.

KA HULIAU. Is AFL-CIO President Lane Kirkland still trying to get you to take a leave of absence from your position as president of the Hawaii AFL-CIO?

KUPAU. I don't know. I haven't heard from him. He sent me a letter and I answered it.

KA HULIAU. What can Kirkland do to the Hawaii AFL-CIO if you don't comply?

KUPAU. He cannot do anything to the state central body because there's no wrongdoing. I'm the one he's after. How can he punish somebody else for what I do?

The AFL-CIO can't put our state central body under trusteeship because it didn't violate any rules of policies. If I don't take a leave of office, I'm still president. The central body elected me by unanimous vote. What did I do to violate the rules? Nothing!

Ka Huliau. Is it true that there are about 40,000 union members in Hawaii who don't want to join the ALF-CIO central body because of your leadership?

Kupau. People don't want to join for a number of reasons. When I became head of the AFL-CIO central body in 1969, we had only 22,000 members, because I supported Jack Burns for governor, a number of unions pulled out. But I don't determine the endorsement, everybody does. Instead of participating in the decision-making process, these unions chose to pick up their marbles and run.

Since then, I've brought the HGEA (Hawaii Government Employees Association) and the United Public Workers into the AFL-CIO. Our membership is between 46,000 and 48,000. There may be 40,000 AFL-CIO union workers who aren't included but the Hotel Workers Union is the only other big union outside.

The three IBEW unions withdrew because they wanted to support Tom Gill in 1970. The leadership of these unions has changed since that time and now it's up to them if they want to come in. I ain't forcing anybody.

And we have a habit of helping unions which don't belong to us. When we speak, we speak for all of them, too. You don't hear these unions take stands on certain issues that affect the entire labor movement in Hawaii. We do. Some guys say they don't want to join because they don't want to pay per capita dues or they don't like my leadership. But the main reason is they like to be boss.

What we try to do in our board meetings now is have it out so everybody understands and we try to accommodate everybody. You couldn't do that with the old leadership. It was "either my way or out"!

The Carpenters Union could have quit in 1968. There was a lot of double-crossing between the unions and we were pissed off. Our boss said, "We no quit; we come back next year and we go beat 'em." We came back the next year and took over the leadership of the Hawaii AFL-CIO.

I was only 33 years old and the other guys were in their late forties and middle fifties. They didn't want young punks around. They said we were going to stumble. Sure, I stumbled, but we all learned as we stumbled. I'm still here. Where are they? Still down in third grade leadership.

Ka Huliau. How can the central labor body help other unions?

Kupau. When the IBEW telephone workers went on strike in 1974, my state AFL-CIO officers were out there every day on the picket lines finding out what was going on. We met with the executive board. After their contract was turned down twice, we offered advice on what they should do and they went back and had the contract approved. That's the kind of help we can provide—advice and consultation.

When the Building Trades didn't have a regular office, we took over space and set up an office inside the state AFL-CIO building. But since most of the building trades unions were not members, I resigned as president of the Building Trades and returned the office space after one year.

I said, "Look, it's up to you guys now. I helped put this thing together; you guys have money in the bank. I can't utilize the state AFL-CIO office when your unions aren't paying per capita dues." What happened? The Plumbers, the Cement Masons, the Laborers and the Plasters—four unions joined in the past two months. And there's more coming.

Out of 17 unions, I foresee about 15 coming in by February. Maybe one or two might not join. Everybody has financial problems. And it's especially bad in the construction industry. This industry has been hurting more than anyone in the state.

This is where we talk about favoritism in government. When I lose 1,500 members in a year and a half and we lose thousands of jobs in Hawaii in two or three years, there's still nothing wrong. You don't see big headlines or nothing. But try laying off 10 pineapple workers from Molokai and it'll hit the newspapers for 10 days with the governor and everybody else getting involved.

Ka Huliau. You said you supported Jack Burns. Why hasn't Governor Ariyoshi shown more concern?

Kupau. I supported Ariyoshi in the beginning. Maybe I'm spoiled by the type of leadership Burns gave this state. And I don't see anybody else around with that type of good leadership, strong leadership. After the last election, George Ariyoshi has exerted some leadership for which I have to commend him. But now he doesn't have to worry about reelection.

I don't care how pretty or how dumb a guy is, as long as he's a strong leader who will take one way and, if you go down the drain with him, at least you know you followed a leader. That's the kind of guy I respect. That's why it was very difficult for me to follow George Ariyoshi after the type of leadership that Burns offered.

KA HULIAU. Are you also trying to say that the ILWU receives better treatment because it's so tied in with the Democratic Party?

KUPAU. No, I'm just saying that concern about pine and sugar seems to be greater than concern about the construction industry. And I don't see why, because these problems affect working people; not only the industries, but working people. Concern about working people should be the same whether you're picking pineapple or pounding nails. That concern hasn't been shown by this administration.

Anybody can tell you when a plantation closes down. If you lose 85 jobs, there's a task force and everybody gets involved. But half of the construction industry shuts down and nobody's involved. We're over here begging for money and jobs. You know something, I think the plantation worker deserves everything he can get. But as a leader looking out for my people, I think concern should be shown equally.

KA HULIAU. What do you think of the recently-formed Hawaii United Labor Coalition?

KUPAU. There are some guys around this town who like to start coalitions. When the Hawaii (United) Labor Coalition called and asked me to join, I said, "Why should I join you? There's already a central body over here with 46 unions. Why not come join us?"

If these unions want unity, why don't they join the AFL-CIO? We have the base, connections with Washington, D.C., and with unions throughout the state. I don't know why they formed their coalition.

What do they do? They threw a fundraising party (for the Safeway strike) and raised $5,000 and were going to throw a party for me. But my union took the position that, if we got into trouble doing union business, it would pick up the tab and accept no donations.

Tony Rutledge and Dick Tam in the same room? What are they going to agree on? The price of tickets for the next fundraiser for the Retail Clerks? And I'll tell you something. The Retail Clerks are an AFL-CIO union but they withdrew from the state central body. Then they came back to ask for help. We sent out a circular reminding all of our union members not to shop at Safeway.

If you can find out how Dick Tam, the ILWU and Tony Rutledge are going to resolve their problems, then you come tell me. If they can do it, then I know they don't need me in the labor movement anymore. I goin' get apron and hammer and go back to pounding nails.

[From the Maui News]

KUPAU: CALLS MUNGOVAN A LIAR; SAYS UNION NOT TO BLAME

HONOLULU (UPI)—Walter Kupau, the leader of the Carpenters Union in Hawaii, said it was not his organization that forced Maui contractor Walter, Mungovan out of business, nor was it responsible for alleged threats against Mungovan and his wife or their employees.

In a press conference held in Honolulu Wednesday, the union's financial secretary denied the charges made by Cher Mungovan when she met with reporters earlier in the day. Mrs. Mungovan, whose husband, Walter owned C&W Construction Co. on Maui, had said.

She received a few threats against her husband and a death threat herself since he entered the Federal Witness Protection Program in July.

During the picketing and other organizing activity that resulted in the prosecution of several union officials "our employees were threatened . . . we received threatening phone calls, a bomb threat, death threats, our property was maliciously damaged and stolen and employees' families were harassed and threatened."

Kupau said no threats were made and called Mr. Mungovan a liar. He offered $10,000 of his own money for the arrest and conviction of anyone who threatened Mungovan.

I won't lose it," he said.

Mr. Mungovan was a key witness in the perjury trials of Kupau and Carpenters Union business agents William Nishibayashi and Ralph Torres. The officials were convicted of lying about their union's activities at Mungovan's non-union firm in 1980 and 1981.

Kupau faces up to 30 years in prison and a $36,000 fine when sentenced Jan. 9. The business agents were sentenced to two years in prison with all but six months of the time suspended.

Mr. Mungovan was put into the witness Protection Program because of fears he may be in danger. He now works on the Mainland as a carpenter, Mrs. Mungovan said, but she does not know where he is.

The Mungovans' alleged the union forced their company out of business and they are seeking civil damages in addition to the criminal convictions already on record. Mrs. Mungovan and her attorney, Chuck Hurd, said legal work on the suit would be almost impossible if Mrs. Mungovan went underground. She is needed to help gather witnesses, get statements and provide information.

Kupau said at his news conference it was not the Carpenters Union that forced C&W Construction to shut down but Mungovan himself because he quit.

"He was in business after my picket line was gone," Kupau said. He said the Carpenter's Union only picketed the firm for three months.

Mrs. Mungovan also said she will continue to lobby Congress to strengthen federal laws against union violence.

Kupau said, if given the opportunity, he would testify before the same congressional committee as Mrs. Mungovan and oppose changes because he believes they would work against unions.

[From the Honolulu Advertiser, Nov. 17, 1983]

KUPAU SAYS HE DIDN'T LIE; CASE GOES TO JURY TODAY

(By Walter Wright)

The Walter Kupau perjury case will go to a federal court jury today after closing arguments.

Kupau is financial secretary of the Hawaii Carpenters' Union. Yesterday Kupau testified he thought he was telling the truth when he gave sworn statements that the union was not trying to organize Maui contractor Walter Mungovan's company when it picketed in 1981.

Kupau said the picketing was ordered by his Maui business agent, William Nishibayashi, and not by him. "It wasn't my beef," he said.

Nishibayashi and business agent Ralph Torres were convicted in May on similar perjury charges, and are free pending appeal of their prison sentences.

If convicted, Kupau faces up to 35 years in federal prison.

Mungovan, who is in the federal witness protection program for fear of his life, says the union shut him down and destroyed his business.

A key question for the jury will be who to believe regarding a phone conversation between Mungovan and Kupau.

In the conversation, secretly taped by Mungovan in 1981, Kupau is quoted as saying to Mungovan that "You're interested in signing the union agreement," and, later, that "in order to settle the beef there is going to have to be some type of agreement consummated and effective at some future date on all new projects prior to you negotiating or bidding on them."

In any event, Kupau said, he didn't mean a contract when he referred to "union agreement."

Bennett also confronted Kupau with newspaper clippings in which he was quoted as having said in 1977 that, although it was illegal to shut construction jobs down by mass picketing, "by the time the contractors take the unions to courts and get things resolved, the contractors lose out anyway. If I want to picket a project, I'll do it."

Kupau testified yesterday he might have made the remark in 1977, but that wasn't his opinion in 1981 during the Mungovan dispute; the clipping was excluded from evidence.

Asked about his regard for legal proceedings, Kupau testified he had once told a lawyer to take a restraining order and "stick it up your ass sideways" when confronted in another case. But he said he did so not out of disrespect for judicial proceedings, but because the lawyer was in the wrong.

Kupau said he signed affidavits saying the Mungovan picketing was only informational, based on information from Nishibayashi as drawn up by union attorney Dennis Chang. Chang "did the preparation; I don't spell that good or talk that good," Kupau said.

Kupau insisted that if he made false statements before the grand jury it was only because "I was tricked by two fast-talking lawyers" who badgered him with a "third degree" in a "lion's den." It was "only myself against everybody" in a room full of grand jurors, with court reporter, clerk and two government attorneys hemming him in. "You have to remember," Kupau told the jury, the attorneys stood in front of him "rapping back and forth—that's what they're trying to do, trying to confuse you."

The lawyers raised their voices and tried to make him say things he didn't say, he said.

Kupau agreed that despite the "harrassment" before the grand jury, he had testified truthfully there. But he added it was hard to give intelligent answers under the circumstances.

Kupau also challenged the accuracy of the government's written transcript of the taped phone conversation.

Where the government quoted Kupau as saying of other contractors, "there's some that, ah, some that we hitting and some we not," Kupau said the word "hitting" was actually "in it."

The labor leader objected that "dots" (...) appearing in the typed transcript were not heard on the tape. "I didn't hear 'dot, dot, dot' on the tape," Kupau said. Later, Kupau acknowledged that his own typed version of the tape contents also included "dots," but said there was no pause on the tape at the point the government transcript showed such dots.

Kupau said the government transcript misplaced punctuation in a manner that affected the meaning of the words. It also said "ah," which he said indicated agreement, when he should have said "uh." And Kupau objected to the government's spelling of "yea," saying it should have been "yeh." And he said the government left out a "you know."

Both sides presented character witnesses saying alternately that Kupau and Mungovan had reputations in the community for honesty.

Kupau's included contractor John Craig of Honolulu; Donald Horio, former press secretary of Gov. John Burns and now consultant to the State Health Department; and James Westlake of the General Contractor's Association.

Kupau also called Claude Matsumoto, vice president of negotiation services for the Employer's Council of Hawaii.

Matsumoto testified Kupau had quickly dropped a picketing threat in one case after Matsumoto told him the facts. But on cross examination by the government, Matsumoto also testified that his relationship with Kupau in past years had been "very rocky" and "not a good relationship."

Mungovan's character witnessed included plastering contractor Richard Martinez, insurance man Thomas Fitzgerald, carpenter Ernest Takitani Jr., real estate broker Dave Richardson, and lumber dealer Ralph Sanford, all of Maui.

MUNGOVAN'S WIFE CALLS FOR OUSTER: KUPAU VOWS TO STAY AS UNION LEADER

(By Walter Wright and Charles Turner)

Cher Mungovan, wife of the contractor whose testimony helped convict Carpenters Union leader Walter Kupau of perjury last week, yesterday urged the rank and file to consider ousting Kupau as a "disgrace to the labor movement."

But Kupau said the union membership "feels that I was railroaded," and vowed to stay in office and "do what the people of Hawaii who elected me tell me to do unless an earthquake comes and swallows me up."

Mrs. Mungovan and Kupau held press conferences yesterday.

Mrs. Mungovan appealed for contributions to the Cher and Walter Mungovan Legal Defense Fund to pay legal fees for a civil suit seeking damages from Kupau and the union on grounds they destroyed the Mungovans' business.

Kupau said Mrs. Mungovan didn't need the money, suggesting her suit against the union could be handled by lawyers on a contingency basis, in which lawyers get paid only if they win.

She said she has exhausted her funds and those of her parents and faces foreclosure on her Maui home if more than $8,000 in back mortgage payments aren't made by next week.

"I no longer have my husband here to pursue this case with me, so I am alone fighting an organization of 6,000," Mrs. Mungovan said.

Walter Mungovan was admitted to the government's witness protection program because of fears his life was in danger, and is in hiding somewhere on the Mainland.

But Kupau said yesterday that Mungovan is a liar who invented stories about threats against his life and is now hiding behind his wife's skirts.

"You know me," said Kupau. "If I'm 6 feet 6 inches (Mungovan's height) and I weigh 220 pounds, I'm not going to have one lady guarding me. I consider myself at

5 foot 8 inches and 190 pounds a man—not 6 foot 6 with a lady guarding me. That's no man."

The FBI yesterday said it could not comment on threats against Mungovan because they are under active investigation.

Mrs. Mungovan said she herself received one death threat when two men came to her house at night and shouted that she was "a dead lady." She said evidence of other threats received by phone and in writing is in the hands of investigators.

But she and her attorney, Charles Hurd, insisted she can't join her husband in the witness protection program now because it would be impossible to press the civil suits against the union if she were not available to attorneys in person.

Kupau faces up to 30 years in prison when he is sentenced Jan. 9 in federal court for lying under oath about the union's efforts to organize Mungovan's company in 1981.

Kupau, in his first public statement since the trial, said he feels great, is jogging every morning and "going about my normal duties" despite the "unjust" verdict in the trial, while waiting for his lawyer, Matthew Pyun, to decide if he should appeal.

Kupau said he still has faith in the system, "an imperfect system, but there's none better."

"I haven't had any negative feedback," he said.

Kupau said the Mungovans will lose their civil suit. "We picketed them for about two and one-half months in February, March and April of 1981, and I have building permits under his name for $200,000 going all the way to December 1982. So how did I put him out of business?"

Mrs. Mungovan said "people wouldn't help us after the picketing Architects wouldn't let us bid on jobs. Others who let us bid wouldn't award us the jobs when we came in low bidder . . .

"What is it about this man that everyone is so afraid of him?" she asked. "Surely my husband can't be the only person in the state who isn't afraid to stand up to Mr. Kupau."

Kupau said he "might" accept an invitation by the Senate Judiciary Committee to testify next year against proposed amendments to the Hobbs Anti-Extortion Act.

He said the amendments would make picket line violence by labor a federal crime, while leaving management immune.

Kupau said there are sufficient local and state laws to deal with violence on the picket line and elsewhere.

Mrs. Mungovan, who has been campaigning for the amendment, says it would overcome a Supreme Court decision which exempts labor from federal prosecution for extortion if the acts occurred during a legitimate labor dispute.

Kupau said the thing that bothered him most about the case was "slanted" stories by The Advertiser, whom Kupau said unfairly blamed him and the union for violence and threats.

Kupau said the newspaper was anti-union.

George Chaplin, Advertiser editor in chief, said last night:

"This newspaper editorially recognizes and supports the essential roles played in our society by both organized labor and business. But we take a dim view of lawbreaking by anyone. Mr. Kupau, as a longtime reader, is familiar with our position."

[Violence or threats of violence directed against nonunion companies and employees in Michigan, as reported by the Port Huron, Michigan, Times-Herald, and the Detroit News.]

[From the Port Huron, MI, Times Herald, Aug. 17, 1983]

CONTRACTOR'S CREW FEELING PRESSURE FROM PROTEST

(By Roberta Stevenson)

Work at the U.S. Manufacturing Co. building site has more reconstruction than construction Thursday afternoon.

The three men working for Jerry Bartow, a non-union independent contractor from Lexington, and a six-man subcontracting crew spent most of the day repairing machinery damaged when pickets broke into the site Wednesday morning.

The workers looked warily at the 50 pickets circling the fence surrounding the site. They admitted they are scared.

The protesters represent several unions that have picketed the site daily since work began July 6. They were angry that Bartow is building the 40,000-square-depot addition to the plant at 2401 16th St. with non-union workers.

Bartow doesn't want to aggravate that anger.

"All we're doing is keeping our heads down and trying not to aggravate the situation. It's hell to have to work like this. It's just not fair," he said.

The work site still showed signs of the pickets entry early Wednesday. Bartow's workers repaired wires that had been ripped from huge construction vehicles. Pieces of shattered glass lay on the grass where windows were knocked out of the machines.

Bartow pointed out dents in the machinery and the smashed windshield of one pick-up truck. At the south end of the site large cinder blocks still lay where they were smashed.

One fork-lift was working. The gas tank of another would have to be drained of sand before it could be used again, Bartow says.

Bartow estimated the damage at between $1,500 and $2,000. He worried about reporting the damage to his insurance company.

"I'll try to eat most of the cost so I don't have to turn in such a large claim," he says." The insurance company may cover me the first time, but if it happens again, they may cancel me. It's still not going to help my rate."

As they do every day, the men at the site work under the guard of a private security agency hired by U.S. Manufacturing Co. But they can't stop the pickets from yelling threats and obsenities at Bartow's crew.

Crew members say protesters have threatened their lives, their families and their homes. As a result none—except Bartow—would give this name for publication.

Crew members talked about how pickets have used sling shots to shoot ballbearings and rocks at them while crew members work on girders high above the ground.

"You have to have total concentration when you're up there," Bartow says. "One misstep and that's it. You don't get a second chance. If one of those men gets killed, who will be sorry then?"

Bartow pointed to two pickup trucks whose doors were dented by pickets kicking and hitting them. The workers enter and leave the site in those trucks each day under police guard. This is ridiculous. I can see that they don't like that I'm non-union, but I thought that this was America and a man could work any way he wanted to," Bartow says.

But union members say they have legitimate gripes too. Non-union workers are being used to build the plant addition when unemployment among union workers is 60 percent in St. Clair County, they say.

Frank Burns, field representative for laborers local 436, said: "It's a damn shame we've got all these union contractors in Port Huron, their businesses are in Port Huron, and we have to hire an out of town, non-union contractor."

But one of the crew members, a former union member, says he has been unemployed since March 1982.

"I took this job because I've been off work for over a year I've exhausted my unemployment and was on ADC," he says. "If I didn't work for him, I don't know where else I could work."

The man is married and the father of three children.

One worker says the pickets should be worried about chasing jobs out of the area.

"When this is finished the company will hire about 50 people. If they keep this up, (the company) may just scrap the whole thing and move out of the area and there would go fifty jobs.

"We're just out here trying to do this little job we've got. It's not even that big a job. I think it would be nice if they'd leave us alone."

NONUNION WORKERS, CONTRACTOR GET UNWELCOME ESCORT THURSDAY

(By Jennifer Harsha and Jill Carlson)

BLAINE—An early trip home from work turned into a terrifying ride through northern St. Clair County for contractor Gerald Bartow and nine of his workers Thursday as they were pursued by men in four other vehicles.

After 40 minutes, the pursuers scattered near Blaine. There were no arrests or injuries, and it is still unclear who the pursuers were.

But Bartow believes he and his men were chased by pickets protesting the use of non-union labor at a construction site at U.S. Manufacturing.

Sheriff deputies questioned several people but later released them.

"It wasn't a chase really, but more of harrassment move. The union protesters just wanted the company people to know they knew they were there," Detective Richard A. Russel said.

The unusual pursuit began at M-21 and Wadhams Road at about 2:30 p.m. Bartow said his pickup was leading the procession on the trip home when he noticed they were being followed by four vehicles.

Bartow and his caravan tried to elude the pursuers through Clyde and Grant townships. Bartow said he was pursued up Wadhams and Vincent roads, up Wildcat Road and down dirt roads in the Blaine area. Speeds never exceeded 60 mph, he said.

"At one point the last car was boxed in by them. But he got away. We just kept going and somehow we all got separated," he said.

Bartow and his two passengers finally shook their pursuers by following trails off Burtch Road in Comstock Hills.

We were scared to death. We don't even really know how we ended up in Comstock Hills. We just kept trying to get away from them however we could," he said.

Police were monitoring the situation through contracts with Bartow's wife. Bartow notified his wife of the pursuit by CB radio.

Bartow said he and his men left U.S. Manufacturing earlier than usual, about 2:30 p.m. Thursday, after hearing that more protesters than usual would picket the construction site.

"They've been threatening to pull us out of our cars. Every time we go in and out we have to roll up the windows and seatbelt ourselves in. And the cars still get kicked and dented," he said.

[From the Port Huron, MI, Times Herald, Aug. 19, 1983]

UNION CHIEFS VOW TO CONTROL PROTESTS

(By Roberta Stevenson)

Union officials, angry that their members largely ignored a court order limiting the number of pickets at U.S. Manufacturing Co., say they will crack down on those who defy the injunction.

The injunction, agreed to Wednesday by contractor Jerry Bartow and officials for three skilled trade unions, limits the number of pickets to no more than 50.

About 300 union pickets were at the building site Thursday morning. Seven arrests were made, including one who was arrested for assaulting a police officer.

Frank Burns, held representative for Laborers Local 436, said he intends to control members of his union.

"I've got a court order as of Wednesday and I plan to enforce it." Burns said. "There will be a peaceful picket line. There will be no violence. We can have no more than 50 workers on the picket line.

I can't contact the other local and I can enforce my members and I don't intend to go to jail."

Burns said he would bring union charges—which could include fines or suspensions—against any man who goes to the picket site without his permission.

Burns said he had eight men on the picket line Thursday. One of his men was among those arrested, he said.

Raymond Lepine, business agent for Carpenters Local 1067, said he also would control his members within the limits of his power.

"I went out there and read the court order to everybody who was out there last night. I can tell my people what they should do, but I don't have a lot of control over them. In fact, I have none to speak of," Lepine said.

"I don't approve of what happened out there (Thursday morning)."

But Lepine stressed he has no control over members of other unions and can only try to have his local members cooperate.

"I can speak to them, that's about it," he said.

Lepine said he did not send any members of his local to the picket line Thursday morning.

"I did not tell anyone to go, only not to go," Lepine said.

Lepine said his local has had little involvement with the picketing since carpentry work was completed about three weeks ago.

The three unions, Local 436, Iron Workers Local 25 and Carpenters Local 1067 are the only locals affected by the injunction. The unions were named in a suit by Bartow in Circuit Court asking to limit the number of pickets at the site.

The Brick, Mason and Plasterers Local 10 were named in the suit, but were not represented in court Tuesday and are not bound by the injunction Representatives for Local 10 could not be reached for comment.

All four are part of the International Union of North America, which represents 12 trade unions.

WORK STOPS AS PICKETS GROW TO 500

(By Steve Spalding)

Non-union workers stayed off the job today at the U.S. Manufacturing Co. construction site as crowds of union pickets swelled outside company gates.

Almost 500 union members, angry at the use of the non-union labor at the site, showed up today. It was the largest crowd to date.

Police also beefed up their strength. About 70 police officers, most of them equipped with riot helmets and tear gas, ringed the plant fence and gate. The Michigan State Police alone sent at least 20 troopers.

But the situation was calm this morning, in contrast to a sometimes tense atmosphere Thursday.

Nine people were arrested outside the gate Thursday after non-union workers were brought to the site. Police also monitored the pursuit of some non-union workers on their way home at about 2:30 p.m. Thursday. No one was arrested, and the pursuers have not been identified.

Port Huron police asked the contractor, Gerald Bartow, and his men to stay home today.

Bartow is an independent, non-union contractor from Lexington who is building a 40,000-square-foot addition to the plant.

"We want to go to work. But we're going to take their advice," Bartow said. He said he and his men plan to continue working soon.

Bartow also said police warned him Thursday night of a bomb threat received on his home and U.S. Manufacturing.

"Nothing happened, thank God," he said.

U.S. Manufacturing closed at about 2 p.m. Thursday because of threats from union protesters, said Ronald Parker, the company's general manager.

"People were in danger of their lives because of the type of machinery we use here," Parker said. "People can't work on those machines when they're looking back over their shoulders to see if a mob is busting through the door."

The plant reopened today.

Parker said the company would like to stay out of the situation, but added, "This is a black mark for the city."

The number of pickets neared 500 about 6:30 a.m. today. They crowd thinned to about 150 by 8 a.m. after many of the pickets left for their own jobs. Many of them work at the Detroit Edison Co. Belle River power plan in East China Township. Some of the pickets who work in the Detroit area arrived and left by private bus.

[From the Port Huron, MI, Times Herald, Aug. 20, 1983]

COURT ORDER SOUGHT TO CONTROL PICKETS

(By Jennifer Harsha and Steve Spalding)

Lawyers for contractor Gerald Bartow will return to court Monday in hopes of getting a court order limiting picketing at the U.S. Manufacturing Co. construction site.

Lawyer David C. Whipple said [illegible] is making a motion to limit the number of pickets protesting the use of non-[illegible] labor at the site to four.

The motion will be heard [illegible] p.m. by Circuit Judge James T. Corden, St. Clair County.

An injunction issued Wednesday by Circuit Judge Ernest F. Oppliger limits the pickets from three skilled trade unions to 50 at the site. But crowds of 500 union members showed up Friday. Nine people were arrested Thursday.

Capt. Herman Dusellier, Port Huron police, said police can't control the situation without a tougher court injunction.

About 70 police, almost half of them Michigan State Police troopers, were at the scene Friday morning. The state police left by 9 a.m.

"The state police are there to assist only if we get in trouble. I doubt if we will be able to get them again unless we get a circuit court order with more teeth in it," Dusellier said.

Police will keep a close watch this weekend on the gate leading to the site at 2401 16th St., he said. No problems were reported by Friday night.

"We will monitor the site 24 hours a day during the weekend," he said.

The state police are on loan from surrounding posts. City officials requested that Gov. James Blanchard allow the trooper backup because the situation is so volatile.

Union members have said they are angry that non-union workers are being used to build the 40,000 square-foot plant addition when unemployment among union workers is 60 percent in St. Clair County.

Picketing by union workers began in mid-July but has escalated in the past week. Most pickets are there between 5:30 and 7 a.m., when many leave for jobs. Some return later.

Frank Burns, field representative for Laborers Local 436, has said he intends to control members of his union.

"We can get more accomplished by 50 peaceful pickets than we can get accomplished by one act of violence," he said. "But I can't speak for the other crafts. That's the worst part of it. There are only four crafts mentioned in the court order and there are almost 17 craft unions."

The injunction also requires that union members be kept from harassing Bartow, his employees and their families. Bartow is an independent, non-union contractor from Lexington. He employs four laborers and is subcontracting about 10 more.

Bartow said he faces an Oct. 15 deadline on the addition and plans to continue working, although he and his employees fear for their lives. His equipment has been vandalized and his workers repeatedly threatened.

"I've made a commitment and I've got to finish it. I just wish they would realize I'm a small contractor and I don't plan to take over. I just want to complete the job and leave," he said.

"I have yet to have one of them (pickets) come up to me and ask me for a job. When I first came down here I had two men come up and ask me for work. I hired both of them."

The other unions affected by the injunction are Iron Workers Local 25 and Carpenters Local 1067. The Brick, Mason and Plasters Local 10 was named in the suit, but was not represented in court and is not bound by the injunction.

According to Burns, union contractors were not allowed to bid on the state-subsidized job and that U.S. Manufacturing Co. opened bids only to non-union contractors.

U.S. Manufacturing General Manager Ron Parker denied that union contractors were not allowed to bid. He said that some union contractors bid on the job, but declined to say why Bartow received the bid.

Bartow said: "The bidding was competitive and fair. I wish they would let me work."

THREATS AGAINST FAMILY LEAD ONE WORKER TO QUIT

(By Roberta Stevenson)

Threats against one non-union worker at the U.S. Manufacturing Co. has forced him to quit his job.

John VanDerMass of Lexington, one of three men working for non-union contractor Jerry Bartow, quit Friday after receiving a number of threats against his family.

"This job really meant a lot to me. I like the work and I like the man I worked for, but I don't feel I have the right to bring this home to my family." VanDerMass said.

"If there is the slightest chance that they will do violence to my family, the job just isn't worth that much to me. And from what I've seen, they are very capable of violence."

VanDerMass is the fourth man to quit Bartow's crew since unions began picketing the construction site in mid-July. He had worked for Bartow for three months.

VanDerMass was a self-employed carpenter before going to work for Bartow. He said he does not know what he will do now.

A police car was parked in his driveway from midnight to 6 a.m. Friday, VanDerMass said. The police protection was added after about four cars followed the non-union workers when they left the site about 3:30 p.m. Thursday.

"I'd have gone through with this except that now it's brought right to my doorstep and I can't take that chance." VanDerMass said. "They couldn't get at us at the picket line, so they're going to get us one by one at our homes."

Bartow has vowed to complete the construction at the plant. He has a Oct. 15 deadline for completing the project.

[From the Port Huron, MI, Times Herald, Aug. 23, 1983]

JUDGE TIGHTENS PICKET LIMITS

(By Roberta Stevenson and Steve Spalding)

Seven non-union workers entered the U.S. Manufacturing Co.'s construction site this morning a day after a judge ordered tougher limits on union pickets.

Three pickup trucks carrying the workers, protected by 50 police, entered the site with a police escort at 8:45 a.m. They received a police escort on their trip from Lexington to the work site in the Port Huron Industrial Park.

Some of the 50 pickets yelled obscenities as the workers entered the gate. No arrests were made, although police had to push some pickets back from the gate.

The tougher court injunction sets boundaries on where the 50 pickets allowed at the site may gather.

The injunction, signed by St. Clair County Circuit Judge James T. Corden, was a second compromise reached by both sides in the dispute. The injunction was agreed to by independent Lexington contractor Gerald Bartow, who is building the addition at the plant with non-union labor, and representatives of the three skilled trades unions, who are picketing the site.

The unions, who are protesting the use of nine non-union workers—who are either Bartow's employees or under subcontracts to him—at the site at 2401 16th St.

The original injunction, issued Aug. 17, limited members of the three unions to a total of 50 protesters, but did not define an area where they could assemble.

Under the order issued Monday, the pickets must remain in an area bounded by the center line of 16th Street at Beard Street on the east, a line across Beard Street at a point 100 feet west of the site's western fence and by public sidewalks on the north and south sides of Beard Street.

Police set up barricades this morning roughly defining the limits defined in the injunction. Police didn't allow any pickets to pass the barricades after about 50 were at the site. However, about 80 were counted near the gate.

Police Capt. Herman Dusellier said the pickets behaved well and generally abided by the court order. Union representatives helped police keep pickets from the site.

Pickets outside the area would be subject to arrest, said Brent Rector, Bartow's lawyer. Bartow sought a limit of four protesters at the site.

"State law prohibits mass picketing and the police will be expected to enforce state law," Rector said.

The injunction is binding on only the three unions involved in the compromise—Laborers Local 436, Iron Workers Local 25 and Carpenters Local 1067—even though many pickets during the past week have been from other unions.

Bartow returned to court Monday to seek a stronger injunction after protesters largely ignored the original order. Police said the injunction was not strong enough to enforce.

An estimated 300 protesters arrived at the gate the morning after the original order was issued. Close to 500 protesters were at the gate Friday morning, but the construction site was closed on advice of police.

Pickets have protested at the site since mid-July. Picketing escalated last week and erupted into violence Wednesday when protesters broke into the site and damaged Bartow's construction equipment. Bartow and his workers say their lives and families have been threatened.

The 64 U.S. Manufacturing employees continued work today. The company produces light truck axle tubes for General Motors Corp. The addition, which is expected to employ 50 more people, will be used to make similar tubes for the Ford Motor Co.

[From the Port Huron, MI, Times Herald, Aug. 24, 1983]

THREATS, VIOLENCE BOTH ABHORRENT

A more restrictive court order issued Monday by Circuit Judge James T. Corden should help law officers regulate picketing of the U.S. Manufacturing Co. construction site in the Port Huron Industrial Park. Now, what will it take to eliminate the threats and harassment that have caused four non-union employees to quit their jobs?

A Lexington carpenter quit over the weekend, saying he had received threats against his family. Such threats are invariably anonymous, hence almost impossible to police. They will disappear, though, if potential threat-makers will only reflect on how they would feel about similar threats to their families.

A union agent remarked, "We can get more accomplished by 50 peaceful pickets than we can by one act of violence." He is right. But threats are just as bad, and just as unlawful. Nothing will turn public feeling, and cool the support of many union members themselves, against the demonstrating unionists' cause more quickly than the kind of intimidation that caused VanDerMass to quit his job.

The only acceptable way to influence the free choice—union or non-union—that every individual has is by persuasion—not extortion.

UNIONS MUST PROTECT JOBS, PROTESTER SAYS

(By Roberta Stevenson)

In the view of one protester, the men on the picket line of the U.S. Manufacturing Co. construction site are here because the union has to take a stand against non-union labor.

"The union, has got to be strong. We can't let people walk on us," he said. " If everybody did this, where would we be?"

The union member, who asked not to be identified, said he doesn't think the recent violence at the site is excessive in the fight to protect union jobs.

"I think it should have happened a long time ago," he said."Why be there if you can't harass them?"

The young man, a member of Laborers Local 436, said he is militant in his view of the situation at the site, but feels that his view is shared by most of the union members who have taken part in the picket.

The young man, a native of Port Huron, has worked in construction for about five years. He has been laid off since 1981 and has exhausted his unemployment benefits. He said he believes the union action is long overdue.

"We're down there because there are so many union people out of work. I'm still 30 or 40 people down on the list to go back to work. Why should U.S. Manufacturing let Bartow put this up?" he said "If they hire 10 (union) guys down there that moves me up 10 places closer to going back to work."

The militant view is shared by Frank Burns, field representative for Laborers Local 436.

Burns said the unions are angry about the increase of non-union labor throughout the state and he believes the union members will stick together in fighting to maintain their traditional hold on the labor market.

"One thing about unions, they do stick together," Burns said. "And if one thinks it's in the right the others will stand behind him."

Union protesters have picketed the site at 2401 16th St. every day since construction began on the 14,000-square-foot addition to the building. The addition will almost double the size of U.S. Manufacturing, which employs 64 people and produces light truck axle tubes for General Motors Corp. The addition will be used to produce similar tubes for the Ford Motor Co. and is expected to employ another 50 workers.

It is the only major non-union construction site in St. Clair County, according to union officials.

Union protesters broke into the site Tuesday morning and did an estimated $1,500 to $2,000 in damage to equipment at the site. Although he was not among the members at the site that morning, the young man supports the move and has no pity for the contractor.

"I just think that's too bad for them,"he said. "That's the only way they (the union members) are going to change the situation is to make it cost them a lot of money."

The protester said he has no hard feelings against the men working for Bartow at the site.

"They may be just like me. They may need a job just like I do," he said. "I blame the guy who is putting this up and the company."

He also does not agree with union leaders who are asking members to comply with a court order to limit to 10 the number of pickets at the site.

"I think as many people should be out there as they want out there," he said. "I don't think they should let them cross the picket line. They should stop them right there."

"They let him get away with it, you watch, the next place will do it (use non-union labor), then the next place and the next place. Then where will we be?" he said.

HARASSMENT WON'T DETER CONTRACTOR

(By Roberta Stevenson)

When Gerald Bartow won a contract to build a 40,000-square-foot addition to the U.S. Manufacturing Co. plant in Port Huron he thought things might begin to turn around for him.

But in the three months he has worked at the 2401 16th St. site, his life has taken on a nightmarish quality that has him afraid for his own safety and the safety of his workers and his family.

"It isn't nice when you leave home in the morning and your kids wake up early so they can say goodbye to you. That kind of bothers you,"' Bartow said.

Bartow, 29, is married and the father of two daughters. He said he has received calls at home threatening him, his family and their home.

"I'm worried about them, and they're worried about me all the time," Bartow said.

Bartow, an independent contractor from Lexington, has owned his company for eight years. Most of his contracting was on residential homes and small commercial buildings, but the depression in the housing market forced him to look in other markets for work.

"I heard about this job down here, I bid on it and I was lucky enough to get it," Bartow said. "Now all I want to do is finish it and get out of here."

Union members have picketed the site every day since construction began July 6. Bartow said he has no problems with the picketing, but he does object to the harassment and threats directed at his crew.

"If they want to picket, do it like they're doing at the telephone offices. I haven't seen anyone carry a picket sign in the three months we've have been here," Bartow said.

Four men have quit the site because of harassment since work began there three months ago.

The last to quit, John VanDerMaas, a longtime friend, expressed deep admiration for Bartow.

"He's the hardest worker I've ever seen. He takes a lot of pride in his work," VanDerMaas said.

"He's well-known in Lexington. A lot of people respect him there and are standing behind him.

"I think you could ask anybody in Lexington, if you ever need help, small favor, big favor, you ask Jerry, you can count on him. He'll be there," VanDerMaas added.

Bartow said he does not agree with the union contention that they have a right to jobs in St. Clair County.

"Everything I've got I've earned. Nobody ever gave me anything. It's all come from long hours of hard work.

"Everything I've got is right here on this site. Everything I make goes back into the business. Sometimes I wonder if it's worth it," he said.

Bartow also doesn't believe that jobs are completely unavailable for laid-off workers.

"I've always been a firm believer that if a person wants to work they can find a job," he said.

Union pickets broke into the site Wednesday morning and did an estimated $1,500 to $2,000 worth of damage to Bartow's equipment, forcing him to spend Thursday repairing it. The site was closed Friday on police advice after about 500 protesters arrived at the site.

"The day they came in here, I just couldn't believe anybody would do this," he said.

Despite all the problems he has encountered at the site, and the threats to his family, Bartow has vowed to complete the job. It's a matter of keeping his word to U.S. Manufacturing Co., Bartow said.

"If I don't keep my word now what good is it going to be?" he said.

[From the Detroit News, Aug. 31, 1983]

400 Battle Police at Site of Strike

(By Joan Walter)

Port Huron—More than 400 unionists stormed a construction site and battled police yesterday in a protest against the use of nonunion building trademen.

About eight nonunion construction workers fled to safety on a nearby roof while protesters ripped down hundreds of feet of cyclone fencing, smashed car and truck windows and overturned a field office trailer.

Twelve persons were jailed and police said arrest warrants were issued for six others. No injuries were reported.

Police from five departments in the Port Huron area were called to the scene and a spokeman for Gov. James J. Blanchard said about 100 state police troopers were put on alert.

Chunks of concrete were hurled during the melee and one demonstrator smashed a hole in a brick wall by ramming it with a one-ton truck belonging to a contractor.

"They were trying to knock the wall down," said Gerald Bartow, contractor at the site, "They stopped when the truck's wheels got buried in the sand, then they busted all the windows and the lights out of it."

Officers escorted the nonunion laborers and Bartow to safety in unmarked police cars and waited until the mob had dwindled before confronting the protesters. Police were aided by a rainstorm that blew through the area and forced the demonstrators to take cover.

Those arrested were charged with malicious destruction of property, and misdemeanor. Charges of unlawful assembly and incitement to riot are being considered, said Terrence P. Houlahan, St. Clear County chief assistant prosecutor.

The protest was aimed at workers erecting a 40,000-square-foot addition to a U.S. Manufacturing Co. plant. The facility produces axle components for light trucks. The plant's 60 nonunion employees were not targets of the protest.

Although a dozen or so nonunion construction jobs are involved, several protesters claimed the impact of allowing nonunion workers would jeopardize the future of unionized building tradesmen in the area.

"You let scab workers put up this building and then it's, 'What the hell, let's put up another,' " said a protester who identified himself only as "Bob."

A meeting to discuss the 2-month-old dispute between union members and the contractor was scheduled last night in Mt. Clemens. Conrad Mallet, Jr., legal adviser to Gov. Blanchard, was expected to attend the session.

Port Huron police yesterday blocked access to the construction site while new fencing was installed. Officers at the scene vowed to keep pickets from the site today.

Ron Parker, U.S. Manufacturing Co. general manager, said he recognized many of the protesters at yesterday's incident as wildcat strikers who walked off their jobs at Detroit Edison's power plant construction site in nearby Belle River.

"Every time they go on strike at Belle River they come up here" Parker said. "They bring them in by the busload."

Bartow called the protesters "a bunch of wild animals."

"These guys have no fear of the law," he said, noting that there has been vandalism at the scene since July 6.

But Frank Burns, business agent for Laborers Union Local 463, said the action "definitely wasn't organized by any union because we don't believe in violence."

A spokesman for the governor's office had reported that 100 troopers were dispatched at noon to quell the disturbance. Later, however, he said the troopers were simply on call.

A state police spokesman said that troopers have not been sent to the scene of a labor dispute since early 1974, when building tradesmen and police tussled at a Mid-land construction site. A year earlier, state police were dispatched to an oil company construction site at Kalkaska.

STRIKERS STORM JOB SITE

(By David B. Robinson)

About 400 unionists angered by the use of nonunion labor on plant construction site, yesterday staged a violent protest in Port Huron.

The protesters created havoc, ripping down fencing, hurling cement, smashing windows and overturning a trailer.

Policy, including state troopers and five departments from the Port Huron area, arrested 12 people on charges of malicious destruction of property.

The protesters aimed their attack at workers erecting a 40,000-square-foot annex to a U.S. Manufacturing Co. plant.

Nonunion workers were not harassed.

The protesters were angered because they felt the future of unionized building tradesmen was being jeopardized by the use of what they termed "scab" labor for the job.

But officials of Laborors Union Local 463 said that the protest was spontaneous, and that they had nothing to do with it.

[Strike-related violence in Montana directed against the Brindeson Corp. and its employees, Montana Power Co., and Haines Pipeline Co. and its employees, as reported by the Great Falls Tribune, the Missoula, Montana Missoulian, and the Helena Independent Record.]

[From the Great Falls (MT) Tribune, July 24, 1983]

HEAVY EQUIPMENT DAMAGED AS UNIONS PROTEST MPC CONTRACT

(By Tom Laceky)

DEER LODGE (AP)—Some 200 union members swarmed over a pipeline construction project Saturday, raging at out-of-state, non-union workers and halting the work, then waited vainly at a city park for several hours for a meeting with Montana Power Co. officials.

At least three pieces of heavy equipment were damaged during the demonstration, but no one was arrested.

Union leaders said they would resume the demonstration at 6 a.m. Sunday.

Company officials blamed demonstrators for the damage, but some demonstrators contended, it was caused by non-union workers to discredit the union demonstrators. The machines were started and turned loose unmanned, one piece damaging an irrigation sprinkler system on a farm and another winding up in a ditch, a Montana Power spokesman said.

Scores of riot-equipped deputies from four counties, two riot squads from the state prison near Deer Lodge and the Deer Lodge police were called in, but police reported no arrests. Officials confirmed they had confiscated at least two firearms.

Walt Kelley, executive vice president of Montana Power, said there appears to be no solution to the dispute and predicted more violence.

"In any negotiation, one side has to make a proposal, and I don't have any proposal to make," Kelley said.

He said Montana Power's contract with Haines Construction Co. of Oklahoma has been signed and cannot be renegotiated.

Kelley declined to meet Saturday with the entire body of demonstrators, but said he was willing to meet with a small group of representatives.

"How do you talk to 200 people at once?" he said to reporters at a news conference in the Powell County Law Enforcement Building after the demonstrators dispersed at mid-afternoon.

Danny Jones, secretary of the Montana Heavy and Highway and Building Construction Workers Council, refused to meet unless all the union members could attend.

Jones had criticized Montana Power for several weeks because Haines is a nonunion company and has brought in some out-of-state workers. He contended again

Saturday that Montana Power could persuade Haines to hire more Montanans if it wanted to, but apparently does not.

Kelley said Montana Power had a "firm guarantee" from Haines to hire Montanans for at least two-thirds of the 170 to 180 jobs on the project and that as of last week the figure was about 63 percent. He said much work and much of the heavy equipment on a pipeline project is highly specialized and that Haines must be allowed some latitude in hiring.

Kelley said Montana Power monitors the hiring weekly.

The pipeline will replace an aging 200-mile line that runs from Cut Bank to Warm Springs and is Montana Power's main carrier of Canadian natural gas for western Montana.

The demonstration began at Haines headquarters a mile west of Warm Springs about 6 a.m., then moved to Deer Lodge under escort by law enforcement officials.

Gov. Ted Schwinden's office was kept informed "on an hourly basis" by Power County Sheriff Dave Collings and Deer Lodge Police Capt. Terry Wilkinson, said Dave Wanzenreid, one of Schwinden's top aides. He said the governor's only actor was to "monitor the situation closely."

Wanzenreid said the governor's office had had no contact with the demonstrators because it was not clear who the leaders were.

The demonstrators came from as far away as Kalispell in northwestern Montana and Colstrip in the southeast, some in private vehicles and some in a chartered bus from Great Falls.

Most dispersed after the initial demonstration at Haines headquarters, but between 75 and 100 remained at the Deer Lodge park to await wo[illegible] about a meeting with Kelley.

Kelley said he was notified by Collings about 12:15 p.m. that the demonstrators wanted to meet with him, and that he arrived in Deer Lodge about an hour and a half later. That was about the time the demonstrators disbanded for the night.

Kelley said law enforcement officers "told me they didn't know if it would be advisable" for him to meet with the entire group at the park.

He said he had no direct contact with Jones or other labor leaders Saturday, but relied on Collings to try to arrange a meeting. Kelley said he had no plans to try to contact the demonstration leaders directly but would continue to rely on law enforcement officials.

[From the Helena, MT, Independent Record, July 25, 1983]

Ted Raps Union 'Riots;' National Guard Ready

(By Garry J. Moes)

Gov. Ted Schwinden said today he will do everything possible, including using the National Guard if necessary, to prevent repeat of what he called a "riot" by union members over the weekend at a Montana Power Co. gas pipeline construction site near Deer Lodge.

A second construction site near Elliston has also been the target of demonstrations.

Schwinden called the union workers' violent protest over use of non-union and out-of-state labor "unconscionable behavior."

The Democratic governor made the statements following a meeting of nearly two hours with Montana Power President Paul Schmechel and Executive Vice President Walt Kelly, and Doug Haines, the Oklahoma contractor heading the project. Although Schmechel requested that the meeting be closed to reporters, the three corporate officials and the governor met with newsmen on the steps of the governor's residence following the meeting.

Schwinden said the purpose of the meeting, arranged on Sunday, was to ascertain the facts of the weekend disturbance, which included damage to construction equipment and the appearance of some 75 bat- and board-wielding demonstrators.

Schwinden said he agreed to "pull together" top state labor leaders, including Montana State AFL-CIO Executive Secretary Jim Murry and Danny Jones, leader of the weekend demonstration, in an attempt to prevent further disruption.

Asked about alerting the National Guard, Schwinden said the Guard "is always on standby" and prepared to respond to control disturbances. He said that if actual violence or even the threat of violence or harm to property resurfaced, the Guard could be sent in.

He said he had told local law enforcement officials that they could count on "the full support of the state."

But he emphasized that any use of the National Guard would come only when local law enforcement people indicate things have "gotten out of control."

Haines said his company had made a "moral agreement" with Montana Power to hire a "certain percentage" of Montana workers, "and we've done that."

He said about 65 percent of the workers are Montanans, and about 95 percent of the unskilled laborers on the job are locals.

Haines said he respected the right of union members to post informational pickets to state their case, but he said he had never encountered anything like the weekend protest on any of his company's projects anywhere.

Schwinden termed the protest "literally a riot."

Schmechel said the purpose of the meeting with Schwinden was to sort out rumors and review all possible courses of action.

Although he did not specify what other courses of action might be open, he said he was satisfied with Schwinden's approach of asking labor officials to meet with the governor to iron out difficulties.

Schwinden said Murry, who has been on vacation, was finally contacted during this morning's meeting and agreed to "pull in some of his people" for a meeting with Schwinden.

Union members brandishing baseball bats and boards were met by sheriff's deputies and called off a second day of protest Sunday morning after a couple of hours.

Union members brandishing baseball bats and boards renewed their protest at the pipeline site at Deer Lodge Sunday, but were met only by sheriff's deputies and called if off after a couple of hours.

"I don't know if we made our point, but we accomplished everything we wanted to accomplish," said Danny Jones, chief organizer of the protest.

The project, which had been going seven days a week, shut down Saturday after some 200 union members drove employees of the contractor, Haines Construction Co. of Oklahoma, off the job. Several pieces of heavy machinery were damaged.

The union members were protesting the fact that some Haines employees are from other states and are not union members.

The union demonstrators also picketed for a time Saturday at a Deer Lodge motel where many Haines employees were staying. Haines moved its workers to Helena Saturday night under escort of law enforcement officers.

About 75 demonstrators returned about 6 a.m. Sunday.

Jones reiterated that the union men want to meet with Montana Power officials, but no meeting was arranged Sunday.

Butte-Silver Bow Sheriff Bob Butorovich reportedly was trying to arrange a meeting, since many of the union leaders are from the Butte-Anaconda area.

Walt Kelley, Montana Power's executive vice president, refused Saturday to meet with the entire group of demonstrators, although he said he was willing to meet with a small number of representatives. He said, however, that he sees no way to resolve the conflict.

The 200-mile pipeline will replace an aging line between Cut Bank and Warm Springs, about 15 miles south of Deer Lodge. It is the main carrier of Canadian natural gas for western Montana.

[From the Missoulian, July 24, 1983]

UNION DEMONSTRATORS SWARM PIPELINE PROJECT

(By Cathy Kradolfer)

DEER LODGE—About 250 Montana union members brought picket signs and threats to Deer Lodge Saturday, hoping to convince Montana Power Co. to break its contract with an Oklahoma pipeline construction firm they say is hiring too many out-of-state workers.

Most union members left before MPC officials arrived from Butte to negotiate with them. They said they will return at 6 a.m. Sunday to make sure no work is done on the MPC natural gas pipeline from Warm Springs to Cut Bank until power company officials meet their demands.

Walt Kelley, MPC executive vice president, offered to meet with up to five representatives of the various unions at any time, but he refused to meet with a group of 250 people. When most union members left Saturday they said they would not talk to Kelly or back down on their protest unless he talks to the entire group.

Scattered incidents of bar fights and union members carrying guns and throwing fireworks were handled by Powell County law enforcement officers throughout the evening Saturday.

Pipeline company workers were escorted from Powell County to Helena on Saturday night, and Doug Haines, head of the pipeline operation, shut down work on the pipeline indefinitely.

More than 40 sheriff's deputies and police officers were called in from Deer Lodge, Butte, Helena and Anaconda. In addition, two SWAT teams from the Montana State Prison in full camouflage dress monitored the demonstration with local law enforcement officials.

Union members started their protest at 6 a.m. Saturday when about 60 cars from throughout the state and a bus carrying about 100 union members arrived at the pipeline company headquarters near Warm Springs. Most of the members on the bus are employed in the Colstrip area, but chartered the bus in Great Falls.

At least four pieces of heavy equipment were damaged during the demonstration. According to Powell County Sheriff Dave Collings, the equipment was started and set loose without drivers.

One large tractor went through three fences and smashed a nearby rancher's irrigation system before law enforcement officers from Anaconda stopped it by jumping onto the moving tractor and shutting it off. A road grader stopped when its blade caught in a ditch.

Company officials blamed demonstrators for the damage, but some demonstrators claimed the incidents were caused by non-union workers to discredit union demonstrators.

The convoy of union members then drove through Deer Lodge to an area about two miles north of town where they parked their bus and cars and set up an informal picket line—drinking beer from a keg in the back of a pickup and planning their next move.

"All we're for is to get state people working," said Phil Schaub, who left Costrip at 8 p.m. Friday with other union members and drove all night to attend the protest.

"These Okies don't need Montana jobs."

About noon, the group moved into Deer Lodge and set up a picket line in front of the Big Sky Motel, where some out-of-state workers were staying.

Law enforcement officers convinced the demonstrators to move to a city park while the officers telephoned MPC officials to set up a meeting between union members and the power company.

Collings, Butte-Silver Bow Sheriff Bob Butorovich and Anaconda police Capt. Terry Wilkinson acted as mediators, relaying messages between MPC officials and union members.

Union members waited at the city park, and said they would talk to power company officials only if they came to the park and talked to the entire group.

The two sides were at a standoff over how many people Kelley would agree to meet with when union members decided to head back to Great Falls on the bus and return again Sunday morning.

The union members made it clear they would not back down on their demands.

"We'll be back for as long as it takes to shut this company down," said Al Palmer, a pipefitter from Gallatin Gateway.

"There are a lot of out-of-work people around here who have nothing better to do than come up here every day and see that these Okies don't work," said Dan Mitchell, a Great Falls union contractor.

Kelley arrived minutes after the crowd of union members dispersed.

He said he wants to talk to the union members, but that little can be done to get out of the contract with the Haines Pipeline Co.

In the past week, the pipeline company has come closer to meeting a MPC contract stipulation that Montana residents make up two-thirds of the 180 employees on the pipeline.

Kelley said 63 percent of the labor force is made up of Montana residents.

Last week, the pipeline company laid off some out-of-state residents and replaced them with Montana residents.

That move was prompted by complaints from union members about the company's hiring practices. The layoff also followed vandalism in which $200,000 worth of heavy equipment owned by the pipeline company was damaged, according to Kelley. (Earlier estimates, since revised, had put the damage figure as high as $2 million.)

Kelley said that the protest probably was prompted by the number of out-of-work people in Montana who are frustrated with not being able to find a job.

He said that because the pipeline is one of only two in the United States under construction at present, it is "more visible and an easier target for criticism."

Dean Conklin, public relations officer for MPC who also attended the meeting, said that even if the pipeline company employed 100 percent Montana workers "there would still be complaints from frustrated, unemployed people."

"This project employs 180 people tops," he said. "There simply aren't enough jobs to provide jobs for all the people who would like to find them."

Kelley said that when MPC took bids from contractors on the project it tried to hire a union contractor even though Haines, a non-union company, was the low bidder.

Montana union members agreed to take a $1.25 an hour cut in salary to make up the difference between the union and non-union bid. At the last minute, the pipeline contractors association refused to agree to the wage concession.

Kelley said that if Montana Power had further delayed letting the bid, it would have jeopardized finishing the project during the summer construction season.

He said that if the pipeline is not finished this summer, the present pipeline "may not last another winter," causing shortages of natural gas for heating in Anaconda, Butte, Deer Lodge, Missoula and possibly Bozeman.

[From the Great Falls (MT) Tribune, Aug. 2, 1983]

PIPELINE CONTRACTOR FILES SUIT

(By Richard Ecke)

U.S. District Judge Paul Hatfield refused Monday to immediately clamp down on picketing of a strifetorn natural gas pipeline project.

Lawyers for Haines Pipeline Construction Inc., the firm building the pipeline from Warm Springs to Cut Bank for Montana Power Co., cited recent violence by a "union-led mob" in seeking a crackdown on picketers, and warned persons may die or be seriously injured without it.

Among those named in the suit are the Montana State AFL-CIO, Construction and General Laborers Union Local 1334 and its officers, Labor International Union, Local 254, International Union of Operating Engineers, Locals 400 and 375.

Work resumed near Deer Lodge on the Haines project as the suit was being filed in Great Falls. The company had suspended operations after equipment was destroyed July 23 at Deer Lodge.

Haines had asked for immediate action on a temporary restraining order, but Hatfield refused. "I will not issue a restraining order without a hearing," Hatfield said flatly.

Haines lawyer Douglas Buxbaum of Butte admitted that the unions and labor officials who are defendants in the case had not yet been served with legal papers. In fact, he asked Hatfield to send U.S. marshals to serve the papers. Hatfield said he'd think about that.

"We are confronted here with a potentially explosive situation," Buxbaum said.

Sheriff's officers and two representatives of the governor's office were on hand Monday, according to Brad Haines, president of the nonunion pipeline company based in Oklahoma.

Some 200 union members from across the state swept over worksites July 23, driving Haines employees off the job for nine days. Several pieces of heavy equipment were damaged.

The firm charged that members of the protest group wielded clubs, ax and shovel handles and baseball bats, and said a security guard employed by Haines was hospitalized after receiving a severe beating.

Labor troubles "are far from over" at the site, said Buxbaum.

The Haines company accused union members, or others acting on their behalf, of "violence, harassment, sabotage and property destruction." The firm said that a bomb exploded July 21 outside the office of Haines in Woodward, Okla.

In Montana, sheriff's departments in Deer Lodge and Powell counties were unable or unwilling to provide adequate security, documents said.

Under the proposed restraining order, only three informational pickets would be allowed at any entrance to the pipeline job site. Pickets would remain in motion at all times, and stay at least 10 feet apart, so as not to block entrances.

In addition to seeking a restraining order and later an injunction, Haines seeks $12 million in compensation and to punish the defendants. Losses by Haines already exceed $250,000, the firm said.

Hatfield is hearing the case after Judge W.D. Murray of Butte disqualified himself.

Attorney Barry Hjort of Helena, representing an operating engineer's local, appeared at the hearing but said he had not seen the documents.

Hatfield said he would set a hearing date on the proposed restraining order within 10 days.

[From the Missoulian, July 26, 1983]

GUARD WON'T ENTER PIPELINE FRACAS UNTIL SHERIFF ASKS

(By Cathy Kradolfer)

DEER LODGE—The National Guard will be called in to halt violence on a Montana Power Co. pipeline construction project "only if local law enforcement officials believe the situation is out of their control," Gov. Ted Schwinden said Monday.

After meeting with labor officials Monday night the governor said he has set up a meeting for Tuesday at 10 a.m. involving union members and officials of MPC and Haines Pipeline Co.; the non-union Oklahoma contractor which is building the natural gas pipeline from Warm Springs to Cut Bank.

For the third day in a row, no work was done on the pipeline because of threats of violence from union members.

Construction on the pipeline has been placed on hold until both sides meet and "this situation is resolved," said Jim Schwatz, MPC public relations officer.

Anaconda-Deer Lodge Police Chief Jim Connors said "everything is quiet" at the "pipeline construction site near Warm Springs where union members converged over the weekend to blast MPC and Haines Pipeline Co. for hiring too many non-union, out-of-state workers.

Schwinden met Monday with Doug Haines, president of the pipeline company, MPC president Paul Schmechel and Walt Kelley, MPC executive vice president.

Kelley, who referred to the union members' weekend demonstrations as terrorism, said the group asked Schwinden to call in the National Guard so that work on the project can continue.

Kelley said the weekend situation was "clearly beyond the control of local law enforcement officers" even though no violence or property damage occurred while they were present.

Several pieces of heavy equipment were damaged early Saturday morning but no one has been arrested in connection with the incident.

Schwinden's message Monday was that the National Guard will be called in only if the local law enforcement officials say the situation is out of control. He said the Guard has not been placed on any formal alert status and he declined to say the situation had reached the riot stage

Schwartz said he had no estimate of the amount of money MPC has lost because of the halt in construction.

He said that the days lost now must be added onto the construction schedule.

The project was scheduled for completion in early November.

"The sky won't fall" if the project is not completed this year, Schwartz said, "But we don't like the ideal of depending on the old line to get us through the winter heating season."

The 200-mile pipeline will replace an aging line that is the main carrier of Canadian natural gas for western Montana.

[From the Standard, Aug. 5, 1983]

PIPELINE SAGA SHOWS NO SIGNS OF ABATING

(By Rick Foote)

The sun hadn't topped the eastern mountains Thursday when union pickets, non-union workers, Anaconda police officers and an aide from the governor's office gathered at Morel Junction near Warm Springs to begin what has become a daily drama.

The non-union workers are employed by Haines Pipeline Co. of Oklahoma on a $25 million, 197-mile pipeline construction job from Morel to Cut Bank.

The line will be the Montana Power Co.'s main natural gas distribution artery for the state.

The union pickets, from the labor organizations that would have represented the workers had Montana Power decided to hire a union contractor, carry signs telling the non-union men that they are working for substandard wages.

Haines' wage rates range from $6-an-hour for laborers to about $12-an-hour plus travel and other benefits for skilled welders.

Standard wages in this area range from about $12-hour for laborers to, in some cases, more than $20-an-hour plus other benefits for skilled welders.

Largely the picketers are ignored, although the men on both sides glower at each other.

Anaconda officers Guy Monaco on the county road north of the work gang gathering site and Mike Softich to the south of the site stopped every entering car Thursday.

"May I see your driver's license, registration and proof of insurance," Softich inquired of one non-union worker.

"This is a bunch of s-," the man replied, "I've lived in this area all of my life."

"I'm just doing my job, enforcing the law," Softich said.

The man didn't have proof of insurance. Softich gave him a break, told him to park the car until he got insurance and waved the next car on.

All told on Thursday, Softich and Monaco issued six tickets for no driver licenses or invalid registration.

One Haines bus driver was ordered by Softich to cease driving the bus because he didn't have a chauffeur's license.

Dan Jones of the Laborers Union is the spokesman for the union group. He is not a picture of calm. A union man all his life, Jones is making noises about supporting a Republican for governor against Gov. Ted Schwinden.

"I might be Bob Marks' campaign manager," Jones quipped.

To Rick D'Hooge, the governor's aide at the site Thursday, Jones said, "Call that governor and tell him to take his thumb off his button and call out the guard."

Jones was referring to a threat by Schwinden after the weekend of July 23 that he would call out the National Guard if any more Haines equipment was damaged during union demonstrations at the site.

Jones' ire, however, isn't confined to the "scabs" as he calls the Haines workers, and to the governor—he is also very angry at the Montana Power Co.

"Montana Power has been trying to break the unions for years," Jones said. "In the 1970s, when they were going to build Colstrip 1 and 2, Montana Power wanted to go non-union. But, Bechtel got the contract and they are 100-percent union."

Jones also decries the "bad publicity" that the unions have been getting over the Haines situation.

"The unions are taking all the heat." he said. "We are not out here representing just union workers. We are representing Montana workers, whether they are union or not."

Jones doesn't believe statements by Montana Power that two-thirds or more of the Haines workers are Montana residents.

"They bring these people in. Just because they got Montana plates and rent an apartment somewhere doesn't mean they are Montana residents."

The union men Thursday were upset about still another report about Haines security guard carrying weapons.

Last week it was reported at least one guard, employed by K-9 Security of Oklahoma, was carrying a submachine gun. A guard said that wasn't true, the gun was a semiautomatic rifle with folding stock.

On Wednesday, the union men said, Powell County Sheriff Dave Collings picked up a guard with a sawed-off shotgun.

But, that turned out to be false. Undersheriff Dick Hauge said Thursday that Collings stopped a security guard who had a shotgun in his truck.

"The gun looked a little shorter than it should be," Hauge told The Montana Standard. "But, we took it in and measured it. It was more than 18 inches, so we had to give it back to the guard. It was a factory model gun."

There was no Haines security force in evidence Thursday.

D'Hooge, who normally works as a labor arbitrator for the state, said he and one other aide report "very, very often" during the course of the day to Dave Wanzenreid, the governor's administrative assistant.

D'Hooge said he doesn't know how long the governor will want to monitor the Haines situation.

The sun has risen by the time the non-union workers were taken to their work sites and the police had folded their operation.

The union pickets, signs in hand, left the site.

But, as Jones has said over the past two weeks, when Haines works, the union pickets will be there along the full 197 miles of pipeline route.

[From the Standard, Aug. 7, 1983]

ALL QUIET ON THE WESTERN (PIPELINE) FRONT

(By Thomas Schmidt)

All was quiet Saturday along Montana Power Co.'s $25 million gas pipeline project, police officials said.

"I don't look for it to end here," Acting Powell County Sheriff Dick Hauge said, "But we can always hope that it will slow down long enough to catch our breath."

Although Haines Pipeline Co. workers were on the job Saturday and "quite a few union people" were in Deer Lodge, there were no confrontations between the two groups, Hauge said.

Police patrolled the road from Morel Junction that parallels the pipeline project into the Deer Lodge Valley, but reported that everything was quiet.

Hauge did not call out help from any other law enforcement agencies Saturday. The day before, officers from four counties, the Montana Highway Patrol, Montana State Prison and the department of revenue helped ride herd on union demonstrators and pipeline workers.

There were rumors Saturday afternoon in Deer Lodge of some sort of trouble near Elliston—where about 50 demonstrators gathered Friday. But Carol Boellard, owner of a motel that stands right next to the road leading out of the pipeline project, said nothing happened.

"Didn't see anybody at all," she said. "Saw the fellas transporting the pipe come down this way a couple of times, though."

Demonstrators who arrived Friday from Colstrip on a chartered bus apparently had returned. Montana Highway Patrol Lt. Col. Robert Griffith Saturday denied that the patrol escorted the bus all the way back to Billings.

Powell County police reported seeing Dan Jones, of Construction and General Laborers Union Local 1334, and Jim Mayes, officer of International Union of Operating Engineers Local 400, poring over maps in a Deer Lodge restaurant with Dan Hillard, an international representative of the operating engineers.

Mitch Mihailovich, officer of United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 41, told Butte-Silver Bow police that his wife received a threatening phone call Friday.

Alice Mihailovich said a woman called and said, "I want you to know that Montana Power says whatever happens to their men happens to your family."

Friday morning's violence marked the second time labor unions have tried to shut down Haines, a non-union Oklahoma firm building a $25 million, 197-mile pipeline from Morel to Cut Bank.

The first time, July 23, about 200 demonstrators were successful in stopping the project for over a week.

In Helena Saturday, the Associated Press reported that Jim Murry, director of the Montana AFL-CIO, charged the Montana Power Co. with deliberately provoking the violence by flaunting out of state, non-union workers in the faces of desperate Montana union members who are without jobs.

"Montana Power went into the heart of unionism in Montana, Butte, which also has extremely high unemployment," Murry said. "They knew that out-of-state people would be working on the pipeline, although perhaps they didn't guess that would include illegal aliens."

Montana Power "knew from the beginning that the pipeline would be built non-union," he said, "They encouraged a union contractor (Southeast Pipeline Construction) to get major concessions from the unions, and then signed with a non-union company."

When asked Saturday night if the recent violence on the pipeline made Montana Power officials regret hiring a non-union firm, utility spokesman Walt Kelley said "second thoughts don't matter here."

Looking to future construction projects, Kelley said, "we'd like to have jobs go union. That would be great." But, he said, Montana Power has a responsibility to hire the firm that will do the work at the lowest price.

Kelley said 139 Colstrip workers called in sick Friday, but said that any disciplinary action against them must come from the contractor, Bechtel Corp., rather than

Montana Power. He said Bechtel could possibly sue the union for the time lost on the project if it affects the completion date.

[From the Great Falls (MT) Tribune, Aug. 9, 1983]

HAINES OFFICIAL REPORTS WORK DISRUPTION ATTEMPTS

DEER LODGE (AP)—A Haines Pipeline Co. official said union protesters attempted to disrupt work on the Montana Power Co. pipeline project again Monday, but Powell County Sheriff Dave Collings said he found no union men along the route except one group of pickets.

The pipeline company had an airplane circling the area and was relaying information to the sheriff's office by telephone, Collings said. At one point the company reported union men were blocking a gate, but the men turned out to be Haines employees, Collings said.

He said the only union men he knew of in the area were "some union officials in the Elliston area, carrying signs."

Doug Haines, field office manager for the pipeline contractor, said his information about union demonstrators came from Haines employees.

"I had received word from our people that there were more than that out there, and that they were trying to get to the equipment," Haines said.

He said his observer reported seeing a group of men at a gate near a ditching crew in the Elliston-Avon area, but that they were gone when he returned later.

Haines equipment has been damaged during two union demonstrations in the past two weeks. Unions object to the company using non-union workers from out of state.

Haines also said union people harassed and threatened some company workers at their homes over the weekend, and some of the employees did not show up for work Monday.

"They were working on a lot of the hands, going by their homes at night," Haines said. "They're scaring away a lot of our hands, especially the local people, because they (the union members) know where they live."

He said the pipeline crews were short "several" workers Monday morning, and the absences hampered work "to a certain extent, but not drastically."

Haines said he was told that "four or five" carloads of union men went to three worksites, two in the Deer Lodge area and one in the Avon-Elliston area, Monday morning and walked onto the pipeline right of way on private property.

"They're trespassing every time they get off the road," he said. "They have trespassed every time they've been out there."

District Judge Peter Meloy of Helena ordered Haines on Friday to stop using unlicensed security guards on the pipeline project. Union officials had complained that the security guards were carrying guns, which is prohibited unless they are licensed by the state.

Haines said Monday the company was arranging to replace its Oklahoma security company with local security guards who are licensed.

The pipeline extends 200 miles from Cut Bank to the Warm Springs area and will replace a deteriorating, 53-year-old line that is Montana Power's major carrier of natural gas for western Montana.

ALL QUITE ON MAFB PICKET FRONT

Things were described as "real quite" around the Malmstrom Air Force Base commercial gate both by union pickets, set up on the approach road, and Cascade County Sheriff's Department deputies standing by to help prevent incidents.

Military personnel continued close identification checks at the main gate after earlier reports of contract workers and vendors employees leaving their firms' marked vehicles at home and coming on base in private automobiles. Flow of traffic through the main gate was not backing up Monday morning.

On the picket line itself, one of the main subjects of discussion were the remarks of Sen. Gary C. Aklestad, R-Galata, assistant majority leader in the Republican-controlled Montana Senate.

In a press release Aklestad said that under the right-to-work law, high pay is based on greater productivity and pride in work "a sadly unknown factor in the conscience of most unions." Aklestad continued, "But now the time has come for unions in Montana to prove they just don't want more pay for getting less done and more time to do it."

One picket said he had been out looking at the West Great Falls Flood Control District project in West Great Falls during the weekend. "That project is a long way ahead of schedule," he said, "and it is being done with union workers, people skilled in their trade—not with scabs."

"And take a look at the First Avenue North Bridge that Sletten built. It was done a year ahead of schedule. Who did the work? Union labor. And the same thing is true with the Warden Bridge. That guy in the paper doesn't know what he's talking about."

The attitude of many of the men on the line was one of "wait and see."

At 1:45 p.m. Thursday, U.S. Dist. Judge Paul G. Hatfield will conduct a hearing on Brinderson Corp.'s request for a temporary restraining order and a permanent injunction against the pickets and the ensuing violence and intimidation alleged in a $20 million damage suit last week by Brinderson against 13 local unions and individuals.

[From the Great Falls (MT) Tribune, Aug. 11, 1983]

GOVERNOR ASKS GROUP TO DEAL WITH DISPUTE

(By Thomas Kotynski)

Responding to fears in Great Falls that siting of a major, new military installation at Malmstrom Air Force Base may be jeopardized by labor unrest, Gov. Ted Schwinden Wednesday asked that local labor and management talk their problems out.

To that end he asked Great Falls businessman Al Donohue to pull together a group of local labor and management representatives to take the leadership in resolving the Malmstrom situation.

In a telephone interview, Schwinden said that while violence at the base has been a concern "the larger picture is the future of the community."

He said much fear has been expressed to him that the Air Force would look at the labor problems at Malmstrom and decide against locating a Strategic Training Range Complex at Malmstrom where B-52s and FB-111s would be headquartered for bomber training missions within the state.

Malmstrom is competing with other air bases for the complex, which could mean $94 million in construction on-base and 1,075 additional personnel with an $18 million annual payroll. Ellsworth (S.D.) Air Force Base, Minot (N.D.) Air Force Base and Cheyenne (Wyo.) Air Force Base are the others believed to be in contention. A decision is expected early next year.

Construction of a $31 million coal-fired powerplant for Malmstrom came to a halt July 22 when pickets went up in a dispute between labor unions and the major contractor, Brinderson Corp., of Irvine, Calif., over use of non-union, out-of-state labor. Violence has marked the shutdown.

[From the Great Falls (MT) Tribune, Aug. 13, 1983]

COURT DELAYS RULING IN PIPELINE DISPUTE

(By Barbara Mittal)

It could be September before a decision is reached on Haines Pipeline Construction Inc.'s petition for an injunction to curb union activities near the Montana Power Co. Warm Springs-Cut Bank natural gas pipeline.

Attorneys for the contractor and the defendant unions were given until Aug. 26 to file final briefs in the case after testimony ended Friday afternoon.

U.S. District Judge Paul G. Hatfield said, "We'll be working all along here," and "I'll attempt to rule as soon as possible" after briefs are filed.

Hatfield took under advisement motions to dismiss the complaint by labor attorneys Joe Duffy, Benjamin Hilley and Patrick McKittrick of Great Falls and Barry Hjort of Helena.

Haines went to court Aug. 1 seeking an injunction after confrontations between non-union employees of the Oklahoma-based contractor and union members in Powell County where work is being done on the pipeline. Union members protested the non-union work being done by an out-of-state contractor.

Brad Haines, company president, and his brother, Doug Haines, field office manager for the Montana project, testified Friday that employees have resigned because they have been harassed and feared for their safety.

Two Haines workers, James Morley of Anaconda and Hoyt McDaniel of Corpus Christi, Texas, testified they had been targets of attacks by pickets July 23 and Aug. 5.

Under questioning by Haines attorney Donald Robinson of Butte, they said they received no help from law enforcement officers at the time of the incidents. However, under cross-examination by Hilley, they said they have since filed formal complaints.

The question of whether local law enforcement agencies are able to control disturbances arising between pickets and pipeline workers is a key issue in the arguments for a federal injunction.

Robinson asked James W. Murry, Montana AFL-CIO executive secretary called as an adverse witness, whether he ever issued a press release to urge union members not to condone or engage in violence.

Murry said "we don't run our unions through the press." He said the AFL-CIO has not authorized, condoned or participated in any acts of violence on the picket line.

Murry said: "I've talked about purported incidents a number of times and how the purported incidents are not helping the labor movement in Montana. Everyone I've talked to agrees it is not in the best interest" of labor.

The unions called no witnesses to testify.

A hearing on a similar petition for injunction filed by Brinderson Corp. of Irvine, Calif., is scheduled to resume at 9 a.m. Monday.

Brinderson is constructing the coal-fired generating plant at Malmstrom Air Force Base.

Both the Brinderson and Haines hearings began Thursday.

STATE JUDGE: PIPELINE MAY HAVE EASEMENT

HELENA (AP)—District Judge Mark Sullivan rule Thursday that Montana Power Co. may take a 50-foot-wide easement across 15 miles of Mike Curran's ranch near Wolf Creek for its new natural gas pipeline.

He granted Curran $30,000 as compensation.

Curran is former head of the now-defunct Northern Tier Pipeline Co.

Sullivan, of Butte, ruled that Montana law allows Montana Power the power of eminent domain to condemn Curran's property and that the construction of a pipeline is an approved use.

Curran objected to the easement on several grounds, including potential damage from the sometimes-violent conflicts between the non-union pipeline contractor and unions that object to its use of non-union, out-of-state workers.

Sullivan rules that concern was premature because construction has not reached the Wolf Creek area.

Curran said Thursday that he had not talked to his lawyer about appealing Sullivan's ruling, but said he will pursue his contention that the conflict between the contractor and the unions could damage his ranch.

[From the Montana Standard, Aug. 21, 1983]

SCHWINDEN LABORS POINT FOR UNIONISTS

(By Rick Foote)

While Montana unions have the right to picket and organize, non-union businesses have the right to operate in Montana and the rights of both sides must be protected, Gov. Ted Schwinden told delegates to the Montana AFL-CIO convention in Butte Saturday.

The governor's reference was to scattered picket violence, particularly against the non-union Haines Pipeline Co. of Oklahoma which is building a $25 million pipeline from Warm Springs to Cut Bank for Montana Power Co.

Schwinden, who had been attending Western States Policy Organization meetings in North Dakota, was not scheduled to speak to the labor gathering. He returned to Montana Friday night and asked if he could speak Saturday, some organizers said.

Union leaders said they felt the delegates' response to the governor's remarks were "polite" and "cool."

Apparently Schwinden expected less than a rousing reception because his remarks included a statement that "Friends, good friends, don't come looking for applause."

Trade unionists are upset with Schwinden because of his previous statements that if picket line violence went beyond the control of local law enforcement officers, he would send in the National Guard.

And the governor didn't back off that position Saturday. In fact, he renewed that pledge.

The governor's Build Montana Program, has been taking a beating during the four-day convention and bumper stickers were everywhere bearing the slogan, "Build Montana—Hire an Okie."

"The bumper stickers notwithstanding," Schwinden said, "Build Montana is not a program to solve Oklahoma's unemployment problems."

Schwinden told the delegates that Montana has lost 4,000 basic jobs in the past five years.

He said the goal of state government is to generate $260 million to help Montana workers to get decent jobs and decent wages determined through the collective bargaining process."

But, he said, "This governor and this administration will not tolerate violence or threats of violence to people or property by out-of-state employers or employers or by people on the picket line."

The only thing that would force him to call out the National Guard, Schwinden said, is the "acknowledgment by responsible local law enforcement officials that they no longer can exercise control over the violence."

Schwinden also praised the work of a commission that he appointed in Great Falls that resulted in talks between the unions and Brinderson Corp. that resulted in a union contract being signed after picket line demonstrations there.

Jerry Driscoll, state AFL-CIO president, and Jim McGarvey of the American Federation of Teachers said after the governor's talk that they expected he might suggest such a commission to work with the Haines situation.

But, the governor did not mention a mediation effort for the pipeline dispute.

In other action Saturday, delegates re-elected Driscoll, from the Laborers Local 98 in Billings, as president Nadean Jensen of the American Federation of State, County, and Municipal Employees Council 9 was elected vice president, and Jim Murry was reappointed as executive secretary, a position he's held since 1967.

Executive board members elected were Ron Loveall of Aluminum, Glass and Brick Workers Local 320 in Columbia Falls; Bill Potts of the United Paperworkers International Union Local 885 in Missoula; Ernie Koepke of Butte from the International Union of Operating Engineers Local 400 in Helena; Fred Sides of Great Falls from the Ironworkers Local 815, McGarvey from the Montana Federation of Teachers Local 8024 in Helena; and Julie Holzer of Laurel from the Oil, Atomic and Chemical Workers International Local 2443.

Murry said the convention officially registered 140 delegates. Some of the presentations drew audiences of up to 170.

[From the Missoulian, Aug. 16, 1983]

Charges Against Pipeline Workers Dismissed

(By Cathy Kradolfer)

Deer Lodge—Assault charges were dismissed Friday against two pipeline employees arrested for firing gunshots and throwing dynamite during a dispute with union picketers near a Montana Power Co. project.

Justice of the Peace Terry McGillis dismissed the charges, saying she decided after a preliminary hearing that both men did not throw or shoot directly at the union members and were only concerned with protecting themselves and their work crews.

Charles Willard, Oklahoma, was charged with throwing dynamite, and Calvin Roswell with firing the pistol. Roswell is from Wyoming.

No one was injured in either incident.

In other news relating to the natural gas pipeline, Powell County commissioners said Monday they will do "everything in our power" to avoid levying a $20,000 emergency tax to beef up law enforcement around the Cutbak-to-Warm Springs project.

And, Chairman Tom Beck said, if further union demonstrations against the pipeline make the emergency levy necessary, the commissioners will sue the unions, MPC and Haines Pipeline Co., the non-union Oklahoma construction firm building the line.

Beck said it is not fair for county taxpayers to pay law enforcement costs "for protecting the unions and the pipeline people from each other."

He estimated it has cost the county $500 so far in wages for reserve deputies called in to assist the three-man county sheriff's department during two union demonstrations.

And that figure does not include a $5,000, bill from the Lewis and Clark County sheriff's department for its assistance in sending about 25 deputies to Elliston, wages for reserve deputies who are members of a Montana State Prison SWAT team, meals for deputies or mileage.

Beck said he expects the commissioners will refuse to pay the Lewis and Clark County bill.

"I thought law enforcement agencies in the state cooperated and helped each other out," he said. "We're not planning to send them a bill when they have problems and ask us for help."

The pipeline company has less than one mile of line to complete before it crosses the Powell County line into Lewis and Clark County on its way to Cut Bank.

Neither Butte-Silverbow nor Anaconda-Deer Lodge counties have submitted bills for their assistance. Both departments sent about 30 men to help during the union demonstrations in Powell County.

The commissioners met with aides from the governor's office following a union demonstration two weeks ago in which about 30 union picketers broke through a fence on a private ranch where the pipeline company was working. The union members stopped only after pipeline workers fired warning shots and threw dynamite.

At that time, the aides told them that levying a two-mill emergency tax would make the state responsible for any costs over the two mills.

In other pipeline-related news, criminal mischief and trespassing charges are still pending against union leader Jim Mayes. Mayes was arrested and charged with cutting through a fence and trespassing on private property.

Powell County Undersheriff Dick Hauge is also investigating a case of vandalism that he believes is related to the pipeline.

Hauge said Saturday that a man who was fishing near Avon had five tires slashed, headlights broken and holes punched in the hood of his truck with a small sharp object.

The man, James Logan of Helena, earlier had crossed a picket line at the Haines Pipeline Co. headquarters in Helena to inquire about a job for his brother. Logan told Hauge that the union members recognized him and wrote down his license plate.

[From the Montana Standard, Aug. 17, 1983]

NO MALMSTROM INJUNCTION

GREAT FALLS (AP)—Work on a construction project at Malmstrom Air Force Base, shut down by labor violence since late last month, will resume Wednesday and the construction company said it will attempt to reach agreements with labor unions.

The Brinderson Corp.'s announcement came after U.S. District Judge Paul Hatfield ruled that he had no authority to halt union picketing activity.

Brinderson said that in spite of Hatfield's refusal to issue an injunction, the company was satisfied with Hatfield's admonition that the violence must stop. This constitutes a mandate for local law enforcement agencies to control the violence, Brinderson said.

The announcement also said Brinderson is meeting with a special citizens' task force to work out an agreement with the North-Central Montana Building Trades Council and its member unions "covering all employees employed at the construction site at Malmstrom Air Force Base."

The citizens' task force was formed at the request of Gov. Ted Schwinden. Ron Senger, secretary of the Building Trades Council, said, Monday that unions were willing to resume negotiations with Brinderson and meet with the citizens' group.

Brinderson's $35 million heating plant job at the base halted July 22 in the wake of stone-throwing and other alleged violence on the part of union pickets, angered by Brinderson's use of non-unions workers.

In his ruling Tuesday, Hatfield said Brinderson had not shown that local law enforcement officials were unwilling or unable to provide adequate protection to the company and its workers.

Still pending before Hatfield is a request by Haines Pipeline Construction Co. for an injunction to curb union picketing and demonstrations aimed at the company's 200-mile pipeline project in Montana. Haines is using non-union labor on the $25 million project.

Hatfield is expected to rule in the Haines case early next month.

PART 3.—COURT PROCEEDINGS

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUN 5 1983
at 3 o'clock and 10 min P M.
WALTER A. Y. H. CHINN, CLERK

DANIEL A. BENT
United States Attorney
District of Hawaii

MARK J. BENNETT
Assistant U.S. Attorney
Room C-242, U.S. Courthouse
300 Ala Moana Blvd., Box 50183
Honolulu, Hawaii 96850
Telephone: 546-7170

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA Plaintiff, vs. RALPH TORRES, (01) WILLIAM O. NISHIBAYASHI, (02) Defendants.	CR. NO. 82-01795 MEMORANDUM IN AID OF SENTENCING; DECLARATIONS; LETTER OF CHER MUNGOVAN

p. 7 —

"Gangster type operator."
Three-year campaign
vs C&W
by union.

MEMORANDUM IN AID OF SENTENCING

The UNITED STATES OF AMERICA, by its attorney, the United States Attorney for the District of Hawaii, submits this memorandum to aid the Court in its sentencing of Ralph Torres and William O. Nishibayashi. The Government respectfully requests this Court to impose substantial sentences of incarceration on both Ralph Torres and William O. Nishibayashi.

Ralph Torres and William Nishibayashi, who stand convicted of perjury and false statement, were the driving forces behind the destruction of a man, a family, a business, and an ideal. They transformed Walter Mungovan, a combat veteran, a carpenter, and a successful contractor, into a man whose business and family life were virtually destroyed, and into a man who feared

CERTIFICATE OF SERVICE ATTACHED

for the safety of himself, his family, and his business. They bullied him, they threatened him, they shut him down, and they willfully and maliciously perjured themselves. They deserve to severely punished.

At the outset, it is important to make clear that the Government is neither against labor unions nor against the legitimate rights of labor unions to organize. Labor unions in this country have a proud history of standing up for the rights the working man. Those rights include the right to a decent wag the right to decent working conditions, and the right to join a union. However, when labor unions or their officers overstep th bounds of the law; when they lie, when they threaten, when they coerce, the Government will prosecute them in the same way it prosecutes any federal lawbreaker.

The Court is well aware of the facts of this case, an there is no need for the Government to recite them in detail. T defendants were business agents for the Carpenters Union, and th proceeded in carrying out their assigned responsibilities with a singleminded determination; their goal was to force or coerce non-union contractors to sign a union agreement. They relentles pursued this goal, taking aim on Walter Mungovan and many other non-union contractors. They did not care what they had to do a they did not care who they had to hurt. They did not care wheth they had to lie or threaten. They had a goal, and a desire to achieve that goal by any means.

The Court heard voluminous testimony regarding the illegal picketing conducted by the Carpenters Union, and the efforts of Ralph Torres and William Nishibayashi to shut down Walter Mungovan unless he joined the union. The Court heard · threats made by William Nishibayashi to Walter Mungovan. The heard William Nishibayashi tell Mungovan that the Carpenters I shut down contractors that did not join the union. The Court William Nishibayashi tell Mungovan that the Carpenters Union \ just getting ready to attack. The Court heard William Nishiba tell Walter Mungovan that just the threat of picketing was enc to get most non-union contractors to sign. Yet, the defendant would have the Court believe that Walter Mungovan is a liar, a that his testimony stands naked and uncorroborated. But the C [illegible] ① heard from Dennis Yoshida, a concrete dispatcher, that Ralph T warned him not to deliver concrete to Mungovan. The Court hea ② Jeffrey Cravalho testify that Torres threatened that if he delivered concrete block to Mungovan, no union companies would do business with his company again. The Court heard Stewart N ③ testify about how Ralph Torres faked an accident and then threatened him. Police reports sent to the U.S. Probation Offi indicate that Torres told Norrie: "You've been too long in Ha brah. I'm going to bring my boys down and we're going to get ④ The same police reports indicate that on another occasion Torr threatened William MacCaugheran, another Mungovan employee, "Y ass is grass, we will get everyone of you, mark my word." Tor ⑤ on another occasion told Darryl Mullins, a Mungovan employee: am going to bust your white ass."

Still, defendants argue that these men are all lying because they were employees of Walter Mungovan. That assertio completely refuted by the declarations under penalty of perjury that the Government submits with this memorandum. These declarations, all signed by citizens of Hawaii, show that the actions of Ralph Torres and William Nishibayashi toward Walter Mungovan were not isolated incidents, but rather were part of a master plan, a plan that had existed before Mungovan came into the union's sights, and a plan that appears to continue to this very day. And, the Government notes that these declarations are merely the tip of the iceberg. Some contractors told the FBI they were simply too scared of the union to tell the truth in a public forum.

⑥ Richard Andrade is a non-union contractor on the island of Maui. In January, 1983 he was working on a job site and approached by Ralph Torres. Torres indicated that he wanted to fight Andrade. Torres swore and cursed at Andrade and told him that he would get him. Torres told Andrade's wife: "I'm going to get that son of a bitch. . . . That is not a threat, it's a promise."

⑦ Lee Muller runs a concrete company on Maui. In May, 1982 he contracted to pour concrete for a non-union company. When Ralph Torres found out that Muller was going to cross a picket line, he said; "I wouldn't, . . . we got power." In September, 1982 when Torres found out that Muller was going to pour concrete for another contractor, Torres told Muller: "You got away with it once, not this time." Again in September, 1982, Torres falsely claimed that Muller had hit him with a concrete truck as he was picketing on a job site. Torres told Muller: "Fucking haole, we're going to get you; you've had it." Torres told Muller: "You are a marked man."

(8) In May, 1981, Michael Klink was working on a constru site for his father, who is a general contractor. The Carpent Union and Ralph Torres were conducting what they claimed was informational picketing. Again, Ralph Torres falsely claimed he was hit by Klink's tractor. Torres told Klink: "You hit m I'm going to sue the shit out of you." In the following days Torres became more aggressive and more obscene and continued t call Klink names. A large black car pulled slowly past Klink, he attempted to leave the job site. Torres pointed Klink out the driver and said: "This is the guy." Torres said that Kli would be "blown away." "It might not happen today, not tomorr but you'll find out."

(9) Gary Fuller is a general contractor on the island of Maui. He at one time was a non-union contractor. William Nishibayashi said to Walter Mungovan, about Gary Fuller, that did not sign a contract, his jobs would be torched. In Decemb 1980 the union was conducting informational picketing of Fulle allegedly claiming he was paying substandard wages. Fuller wa told that if he signed a contract, the pickets would be pulled Fuller signed a contract. Previously, both Nishibayashi and T told Fuller: "We'll get you."

(10) Earl Stoner is a general contractor on Maui. In Jan 1981, Stoner decided to hire a non-union contractor. Ralph Tc told Stoner that if Stoner went ahead with his plan, "bad thir were going to happen to him.

(11) Jesse Spencer is a non-union contractor on Maui and In August, 1982 the union was conducting "informational" picke

Ralph Torres falsely claimed he was hit by Spencer's truck. Torres told a concrete company representative that he and his men "betrayed the Carpenters Union" because they were supposed to keep Spencer from getting concrete.

Estilito Benjamin Castillon, Jr. is the owner of a masonry company on Maui. He is a non-union contractor. In May, 1983, he was working on a warehouse located opposite the Carpenters Union Hall. There were 150 carpenters there led by the head of the Carpenters Union and Ralph Torres. They were apparently there for some type of protest. Ralph Torres continually harassed Castillon and his workers. He referred to them as scabs and hollered at them. He put up his fists as if he wanted to fight. Carpenters continually threw cans and rocks against the warehouse building. Torres asked Castillon if he was able to "catch the hint yet," indicating to Castillon that the union members wanted him to leave. Because Castillon and his employees were fearful, they left the project. As they left Torres said: "If you come back, we will come back."

Alfredo Bulusan is the owner of a non-union construction company on Maui. In September, 1982 William Nishibayashi continually asked him when he was going to sign a union contract. Bulusan said he could not afford to and Nishibayashi told him that was his problem. Just as Nishibayashi told Walter Mungovan, he told Bulusan that the contract would affect only future jobs, not current jobs. Nishibayashi visited Bulusan while he was teaching a course at Maui Community College and blew up in front of the whole class when Bulusan stated that he did not think he would sign a contract. Nishibayashi stated: "You do what you've got to do, and I'll do what I've got to do." About a week later, the same illegal "informational" picketing hit Bulusan that hit Walter Mungovan. Bulusan met Nishibayashi at his office, and Nishibayashi told him that if he signed the contract his problems would be over. Nishibayashi asked Bulusan if he was wearing a tape recorder.

Victor Sinenci is a non-union contractor in Hana, Maui. In the fall of 1981, Ralph Torres and Steven Suyat promoted his joining the union. In early 1982, Sinenci met William Nishibayashi. Nishibayashi asked Sinenci to sign a contract. When Sinenci stated that he probably would not, he was hit with "informational" picketing shortly thereafter. This was the same type of picketing with which Walter Mungovan was hit. In late January or early February, 1982, Nishibayashi told Sinenci that he should sign a union contract and that the signing: "Gotta be soon."

Compared to William Nishibayashi and Ralph Torres, Dennis Yoshida was a relatively minor soldier in the war waged by the Carpenters Union. However, he too was convicted of perjury, and Chief Judge Samuel P. King sentenced him to six months imprisonment. Judge King, who sentenced Yoshida on April 29, 1983, made some telling comments during the sentencing proceeding.

> You know the problem with this is not only that there was perjury, but the underlying activity that the labor department was involved in was one to try and preserve the integrity of the business operations on Maui, and the allegations that are behind the perjury charge in this case is that Torres, if that was his name, was essentially running a gangster type operation to get what he wants out of terrorizing employers contrary to federal law. I guess that's what the labor department

> was working on. You can't do this. It's against Federa law.

Transcript of April 29, 1983 at p.8 (emphasis added). The Co further stated:

> Wait, wait, wait. Then when it comes to [Yoshida] being asked under oath, that was the time when he should have told the truth. Even after he heard the tapes he had a chance to say: Now I remember that conversation. That's right. But, so far as I know he never has and the result is that, as Mr. Bennett pointed out: A perfectly legitimate operation on Maui was attempted to be put out of business by the kind of operation that Mr. Torres was involved in.

_Id._ at 8-9. The testimony adduced at trial and the declarati attached to this memorandum give credence to exactly what Jud King said; a legitimate business operation was virtually put business by the tactics of the defendants.

As the Court well knows, there are four goals of sentencing; punishment, deterrence, protection of society, an rehabilitation. And, as the Court is also aware, the crimina justice process requires that the punishment "fit the offende not merely the crime" and thus a judge can consider informati "about the convicted person's past life, health, habits, cond and mental and moral propensity." _Williams_ v. _New York_, 337 241, 245, 247 (1949). _See also_ 18 U.S.C. §3577, _Roberts_ v. _U States_, 445 U.S. 552 (1980).

The defendants clearly deserve to be punished. As their illegal tactics almost destroyed Walter Mungovan and his family. Walter Mungovan's wife testified at the trial. Aft the trial she went to Washington to urge congressmen and senat to vote in favor of a 1983 Hobbs Act amendment. She distribut letter to various congressmen and senators. A copy of that lett is attached to this memorandum. That letter details the pain an suffering that the Carpenters Union put Mrs. Mungovan and her husband through. There is no further need to detail what happen to the Mungovans, except to say that they suffered, and they suffered unjustifiably.

Yet, there was another victim beside the Mungovans, anc that victim was the judicial system. The federal courts in this country, especially in civil cases, run on affidavits. As the National Labor Relations Board attorney pointed out during trial, affidavits are the life blood of his agency, and no doubt they ar the life blood of many other agencies. A fundamental precept of administrative law, and of the civil law in general, is that affidavits, executed under oath, must be presumed to be true. If that presumption were a nullity, the court system and the administrative agencies would collapse. Ralph Torres and William O. Nishibayashi undermined that system when they perjured themselves and when they lied to the National Labor Relations Board.

Deterrence is another goal of sentencing. Nothing the Court will do can prevent individuals from perjuring themselves, but the Court can send a message to people in the community. The Court can tell potential perjurers that if they lie under oath or if they lie to a federal agency, and they get caught, they are going to pay a heavy penalty. The Government contends that a brie period of incarceration would not send the desired message to the community. It would not be a sufficient deterrent to those who ar considering perjury for personal gain. And, the Government is not talking only about people in the Carpenters Union, or only about people in the labor movement, or only about people in management; it is talking about all those who would lie to the federal courts and to federal agencies. In order for the system to survive, those people must know that if they lie, they face severe punishment. The Government asks the Court to send a strong and clear message.

The final goal of sentencing is that of protection of society. It is clear beyond doubt that society must be insulated from William Nishibayashi and Ralph Torres. They have engaged in a systematic pattern of threats, coercion, and illegal picketing. Society has the right to be protected from their tactics.

The sentencing process is one of society's principal means of punishing violations of the rules of acceptable conduct. The victims of crime have a hope, a legitimate expectation that when they are injured, society will come to their defense. They have a prayer that when they become victims of crime they will not be abandoned, that the instrument of their downfall will not be condoned by the very society that exists only because it is just. This Court, by its sentence, will be sending a message to the victims of crime as well as to the criminals.

The conduct of these defendants was reprehensible and it caused injuries to individuals and to the judicial system. Ralph Torres and William O. Nishibayashi must be punished, society must be protected, and the community at large must be sent a message. The Government respectfully requsts the Court to sentence Ralph

Torres and William O. Nishibayashi to substantial terms of incarceration.

DATED: July 5, 1983, at Honolulu, Hawaii.

DANIEL A. BENT
United States Attorney
District of Hawaii

By Mark J. Bennett
MARK J. BENNETT
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within was duly mailed to Roland Nip, Esq. Attorney at his last known address on July 5 1983

Mark J. Bennett
ATTORNEY FOR U.S.A.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within was duly mailed to Lloyd Y. Asato, Esq. Attorney at his last known address on July 5 1983

Mark J. Bennett
ATTORNEY FOR U.S.A.

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUL 15 1983
at 8 o'clock and 30a min. M.
WALTER A. Y. H. CHINN, CLERK

Of Counsel:
DAMON, KEY, CHAR & BOCKEN
Attorneys at Law
A Law Corporation

CHARLES H. HURD 1702-0
PETER J. HERMAN 3109-0
10th Floor, City Bank Building
810 Richards Street
Honolulu, Hawaii 96813
Telephone: 531-8031

BUCHALTER, NEMER, FIELDS,
CHRYSTIC & YOUNGER
ARTHUR CHINSKI
OLYMPIA L. PACHARES
1900 Avenue of the Stars, Suite 1700
Los Angeles, California
Telephone: (213) 990-2165

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

C & W CONSTRUCTION COMPANY, a sole proprietorship, CHER MUNGOVAN AND WALTER MUNGOVAN,

Plaintiffs,

vs.

BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 745, AFL-CIO; WILLIAM O. NISHIBAYASHI; RALPH TORRES;

Defendants.

CASE NO. 83-0710

COMPLAINT; DEMAND FOR JURY TRIAL

COMPLAINT

The above-named Plaintiffs bring this Complaint for damages and injunctive relief against the above-named Defendants and complain as follows:

JURISDICTION AND VENUE

1. This Complaint is filed and this action instituted against the Defendants under Sections 4 and 16 of the Act of Congress of October 15, 1914, C. 323, 38 Stat. 731, 737 (15 U.S.C §§15 and 26), as amended, commonly known as the Clayton Act, in order to secure damages from and equitable relief against the Defendants and to redress, prevent and restrain violations by the Defendants, as hereinafter alleged, of Section 1 of the Act of Congress of

July 2, 1890, C. 647, 26 Stat. 209, 282 (15 U.S.C. §1), as amended, commonly known as the Sherman Act. This action is also filed and instituted pursuant to Section 303 of the Labor-Management Relations Act, 1947 (29 U.S.C. §§185 and 187 respectively; hereinafter referred to as the "LMRA") to recover damages for an illegal secondary boycott engaged in by the Defendants herein, together with the cost of this action. Jurisdiction is further conferred on this Court by 8 U.S.C. §§1961, 1962 and 1964, commonly known as the Organized Crime Control Act of 1970; 28 U.S.C. §1331 relating to civil actions arising "under the Constitution, laws or treaties of the United States" and 28 U.S.C. §1337 relating to civil actions or proceedings "arising under any act of Congress regulating commerce". By virtue of the above-enumerated statutes, this Court may exercise pendent jurisdiction over those state claims hereinafter alleged.

2. Venue in this action is proper pursuant to the provisions of 28 U.S.C. §1391(b) and 18 U.S.C. §1965(a) as each of the Defendants transacts business and is found within the District of Hawaii and is within the jurisdiction of this Court for the purpose of service. Plaintiffs are informed and believe that the unlawful acts done in violation of the anti-trust, anti-racketeering, and labor laws, as hereinafter alleged, have been performed within the District of Hawaii.

THE PARTIES

3. Plaintiff C & W Construction (hereinafter "C & W" or "Plaintiff") is a sole proprietorship of Walter Mungovan with its principal place of business located at Kihei, Maui, in the State of Hawaii. C & W is in the business of providing general contracting services in the residential building and construction industry.

4. Plaintiff Walter Mungovan has no state of residence at the time of filing this Complaint; he was a resident of Kihei, Maui, in the state of Hawaii and was a management employee of C & W, at all time relevant to this Complaint.

5. Plaintiff Cher Mungovan is a resident of Kihei, Maui in the State of Hawaii; she was a management employee of C & W, at all time relevant to this Complaint.

6. Defendant Brotherhood of Carpenters and Joiners of America, Local 745 AFL-CIO (hereinafter referred to as either "Defendant" or the "Hawaii Carpenters Union") is an unincorporated association and labor organization within the meeting of §2(5); of the National Labor Relations Act [29 U.S.C. §152(5); hereinafter referred to as the "NLRA"] having its principal office located in the the City and County of Honolulu, State of Hawaii. The Hawaii Carpenters Union represents employees in an industry affecting commerce within the meaning of §303 of the LMRA.

7. Defendant William Nishibayashi (hereinafter "Nishibayashi") is a resident of the State of Hawaii and at all times relevant herein is an agent, representative, and employee of the Carpenters Union, serving as a Business Agent.

8. Defendant Ralph Torres (hereinafter "Torres") is a resident of the State of Hawaii and at all times relevant herein is an agent, representative, and employee of the Carpenters Union, serving as a Business Agent.

9. Various other persons not named as Defendants in this Complaint have participated as co-conspirators and/or participants in the offenses charged herein and performed acts and made statements in the furtherance thereof.

10. At all times hereinafter mentioned, Plaintiff C & W was and is an employer in an industry affecting commerce within the meaning of §303 of the LMRA, and within the definitions set forth in §§2(2), 501(1) and (3) of the LMRA [29 U.S.C. §152(2), 142(1) and (3)], and is engaged in interstate commerce within the coverage of the Sherman Act.

11. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned herein, Defendants, and each of them, were the officers, members, agents, servants or employees of each other Defendant, and

the acts and omissions herein alleged were done or suffered by each of them, acting individually or through or by their alleged capacity, within the scope of their authority and upon authorization or ratification of their respective governing bodies.

FACTS

12. In 1979, Cher and Walter Mungovan founded C & W to conduct a general construction contracting business on the island of Maui, in the State of Hawaii. Walter Mungovan was a journeyman carpenter himself and Cher Mungovan was experienced in business. C & W specialized in residential work, building custom houses on the island of Maui since the 1979 founding. In the twelve months preceding the events described in this Complaint, C & W had a gross income in excess of $500,000.00. By the end of 1980, C & W was working on three jobs, as follows:

(a) 375 Front Street, Lahaina, Maui;
(b) 3448 Hookipa Place, Kihei, Maui; and
(c) 634 Laniolu Place, Kihei, Maui,

At the end of 1980, C & W employed fifteen carpenters and masons, as well as other personnel.

13. In December 1980, Nishibayashi informed Walter Mungovan that the Hawaii carpenters union had decided to target C & W for an organizational campaign, for the purpose of obtaining a union contract signed by the principals of C & W. During the course of this discussion, Nishibayashi threatened violent consequences if C & W did not immediately sign a union contract. In addition, Nishibayashi threatened to picket C & W's three job sites if no union contract was signed. Thereafter, other and similar demands were made by Torres and other agents of the Hawaii Carpenters Union, for C & W to recognize and bargain with the union, as the collective bargaining representative of C & W's employees.

14. Walter Mungovan, acting for C & W, refused Nishibayashi's demand to execute a union contract, and refused similar demands at later dates. Walter Mungovan

informed Nishibayashi in their December 1980 meeting, that C & W was already paying wages to its employees, of at least union scale or better. Walter Mungovan offered to negotiate for a union contract, when C & W reached a developmental stage of constructing non-residential projects -- a submarket wherein competitors are typically larger and already unionized with correspondingly higher costs.

15. On January 6, 1981, acting at the direction of Nishibayashi and Torres and other leaders of the Hawaii Carpenters Union, union members began picketing the three C & W jobsites. For more than three months, the Hawaii Carpenters Union picketed at least one C & W job every day and usually at least two jobs each day. The picket signs read as follows:

> AFL-CIO Carpenters Union Local 745 protests the substandard wages, hours or conditions of employment on this job by C & W Contracting. AFL-CIO Carpenters Union Local 745 does not intend by this picket line to induce or encourage the employee of any other employer to engage in a strike or concerted refusal to work. This picket line supplied by the AFL-CIO Carpenters Union Local 745.

Defendants caused this picketing to commence without filing, within a reasonable period of time from the threat to picket as alleged in paragraph 13, a valid petition under § 9(c) of the NLRA.

16. During the first week of the pickets, C & W requested that its employees not work on the three job sites. During that time, C & W asked its employees if they would be willing to return to work. The employees agreed to do so, crossing the picket lines to work on January 12, 1981 and each working day thereafter, whenever materials were available.

17. On February 9, 1981, the National Labor Relations Board (hereinafter "NLRB") held a representation election, at the request of C & W. The employees of C & W unanimously voted to have no representation by the Carpenters Union.

18. The Regional Director of the NLRB issued

Complaints alleging that the Carpenters Union's pickets at C & W's job sites were illegal. The NLRB brought suit in the United States District Court for the District of Hawaii to enjoin the pickets.

19. Despite the election vote of the employees of C & W and the NLRB proceedings, the Hawaii Carpenters Union continued to picket at one or more of the C & W jobsites until April 16, 1981.

20. C & W had entered into contracts for the supply of materials to the three job sites, listed above, as well as a sub-contracting jobsite. Agents or representatives of the Hawaii Carpenters Union, specifically including but not limited to Torres, wrongfully influenced the materials suppliers for C & W to not deliver various supplies to C & W's jobsites.

21. C & W's suppliers and others failed or refused to deliver various materials, including concrete, crushed rock, concrete blocks, lumber, and glass or to otherwise do business with C & W.

22. In addition to the suppliers, the Hawaii Carpenters Union influenced, contacted or coerced others who were obligated to perform contractual services for C & W, not to cross picket lines of the Hawaii Carpenters Union.

23. In the NLRB proceedings, Nishibayashi and Torres and others lied in affidavits submitted to the United States District Court for the District of Hawaii, in order to further their illegal and wrongful purposes and to the damage of C & W.

24. Subsequent to the NLRB proceeding alleged above, Nishibayashi and Torres were each indicted and convicted of four counts of perjury and false statement in United States District Court of the State of Hawaii.

25. As a result of the actions of the Carpenters Union, C&S suffered injury to its business, including but not limited to the following:

(a) delay in completing jobs;

(b) higher costs;

(c) termination of a job in progress;

(d) lost opportunities for other jobs;

(e) damage to business reputation;

(f) loss of employees who could not be kept employed on a full-time basis;

(g) higher interest rates on financing; and

(h) lost profits.

26. In addition to the business injuries suffered by C & W, both Cher and Walter Mungovan suffered emotional distress and damage to their reputations as efficient business persons and fair employers, as a direct and proximate result of the actions of the Carpenters Union.

27. All of the above actions were undertaken by agents or representatives of the Carpenters Union, including Nishibayashi and Torres, while acting within the authority delegated or ratified to them by the Carpenters Union's leadership and membership.

FIRST CLAIM FOR RELIEF

(15 U.S.C. §§1, 15, 26)

28. Plaintiffs repeat and reallege paragraphs 1 through 27 of this Complaint with the same force and effect as though fully set forth herein.

29. The acts complained of herein affect and are in interstate commerce. Substantial quantities of raw material used by C & W amd which were the subject of the secondary boycott and conspiracy hereinafter alleged were in the flow of and substantially affected interstate commerce.

30. The Defendants in this action together with others, have entered into an anti-competitive scheme, combination, conspiracy and contract in restraint of trade to prevent C & W from competing in the construction industry and to restrain competition in the construction industry in Maui, Hawaii, and to induce suppliers of goods to C & W and others not to deal with C & W such as to constitute a concerted refusal to do business with C & W in violation of §1 of the Sherman Act (15 U.S.C. §1).

31. The aforesaid scheme, combination, conspiracy and contract have damaged C & W in its business and property and have caused irreparable injury to C & W in its business and property and have caused irreparable injury to C & W in that said conduct will prevent C & W from competing and may drive C & W out of the construction industry, all in restraint of trade.

32. By reason of the foregoing, Plaintiffs are entitled to recover all of their damages, including treble damages, attorneys' fees and the costs and disbursements of this action, as provided by 15 U.S.C. §15.

33. The Defendants will continue to violate the anti-trust laws and to damage Plaintiffs unles they are enjoined from doing so by this Court.

34. By reason of the foregoing, Plaintiffs request that the Court issue an injunction to permanently enjoin the Defendants from any further violations of the antitrust laws and to direct the Defendants to cease and desist from the unlawful activity complained of herein.

SECOND CLAIM FOR RELIEF

(29 U.S.C. §187(b))

35. Plaintiffs repeat and reallege Paragraphs 1 through 27 of this Complaint with the same force and effect as though fully set forth herein.

36. Plaintiffs are informed and believe and, therefore, allege that by the acts alleged in paragraphs 5, 16, 19, 20, 21 and 22 Defendants, in violation of §8(b)(4)(ii)(B) of the LMRA, have threatened, coerced, restrained and/or induced persons and employers engaged in commerce, and with whom Defendants have no labor disputes, with the purpose and object of forcing or requiring such persons to cease doing business with C & W and other persons and for the further object of forcing C & W to recognize or bargain with the Carpenters Union as the representative of C & W employees although the Carpenters Union was not certified as the representative of such employee. During

the same period, Plaintiffs are informed and believe and, therefore, allege that by the above-described acts, Defendants, in violation of § 8(b)(4)(i)(B) of the LMRA, have induced and encouraged employees of C & W and other persons engaged in commerce, to refuse to perform services for C & W and other persons, with the same purpose and object as herein set forth.

37. As a direct and proximate result of the unlawful conduct hereinabove alleged, Plaintiffs have;

(a) Sustained losses and value to their business and reputation;

(b) Sustained losses and profits which they otherwise would have made; and

(c) Incurred substantial expenses in attempting to overcome the effect of such unlawful conduct and continue lawfully their respective business operations. Plaintiffs have not ascertained the exact dollar amount of said damages in part because they are continuing. When said amount has been ascertained, Plaintiffs will ask leave of Court to amend their Complaint by inserting said amount.

38. Defendants' conduct is in wanton and willful disregard of Plaintiffs' rights, of customers dependent upon completion of Plaintiffs' work, subcontractors required by the terms of their contract to complete timely the work, notwithstanding Defendants' activities, and other public interests. Plaintiffs are accordingly entitled and claim exemplary damages in an amount sufficient to punish Defendants for their unlawful conduct and to deter others from similar wrongful conduct.

THIRD CLAIM FOR RELIEF

(18 U.S.C. §1964)

39. Plaintiffs repeat and reallege paragraphs 1 through 27 of this Complaint with the same force and effect as though fully set forth herein.

40. The acts of Defendants alleged in paragraphs 13, 15, 19, 20, 22, 23 and 24 hereinabove constitute a scheme on behalf of Defendants to defraud Plaintiffs.

41. Defendants committed the acts alleged in said paragraphs with the specific intent to defraud Plaintiffs.

42. In furtherance of Defendant's scheme to defraud Plaintiffs, Defendants have used the United States mail and have placed interstate telephone calls in violation of 18 U.S.C. §§1341 and 1343, as follows:

(a) The illegal picketing and other acts were conducted by members and Business Agents on the island of Maui, pursuant to instructions and/or with concurrence by leaders of the Hawaii carpenters union located in Honolulu;

(b) Honolulu-based leaders of the Hawaii Carpenters Union used interstate telephones to attempt to negotiate with Walter Mungovan to end their illegal campaign, in exchange for C & W signing upon a union contract; and

(c) Leaders of the Hawaii Carpenters Union used the U.S. mails to send letters requesting pay records for C & W employees and threatening to picket C & W unless Plaintiffs prove that they were paying prevailing wages and that working conditions were good.

43. By the acts alleged in paragraphs 23 and 24 hereinabove, Defendants have corruptly and/or by threats or force endeavored to influence, obstruct and/or impede the due administration of justice, in violation of 18 U.S.C. §1503.

44. Defendants committed such acts with knowledge of the falsity of their affidavits and testimony and with the specific intent to conceal information and thereby to obstruct justice.

45. By the acts described hereinabove, Defendants have indirectly and directly obtained the property of Plaintiffs, with their consent, induced by wrongful use of actual or threatened force, violence or fear, in violation of 18 U.S.C. §1951(b)(2).

46. By engaging in the acts alleged hereinabove, Defendants, and each of them, established a pattern of racketeering activity, as defined by 18 U.S.C. 1961(1)(B),

consisting of violations of 18 U.S.C. §§1341, 1343, 1503 and 1951(b)(2).

47. By the acts and conduct described hereinabove, Defendants and each of them, have conducted and/or participated in the affairs of an enterprise which is engaged in and whose activities affect interstate commerce within the meaning of 18 U.S.C. §1962(c).

48. Defendants agreed, one with the other, to violate 18 U.S.C. §§1341, 1343, 1503 and 1951(b)(2).

49. In furtherance of this agreement, Defendants have committed the acts alleged hereinabove in violation of 18 U.S.C. §1962(d).

50. As a result of Defendants above described acts, Plaintiffs have been injured in their business and reputation and are entitled to recover all of their damages including treble damages, attorneys' fees and costs, as provided by 18 U.S.C. §1962(c). Plaintiffs have not ascertained the exact dollar amount of said damages at this time; when said amount has been ascertained, Plaintiffs will ask leave of Court to amend their Complaint by inserting said amount.

FOURTH CLAIM FOR RELIEF

(H.R.S. §480-4; Conspiracy in Restraint of Trade)

51. Plaintiff repeats and realleges paragraphs 1 through 34 of this Complaint with the same force and effect as though fully set forth herein.

52. Plaintiffs allege that this claim is based on the same operative facts set forth in the claims alleged hereinabove, and as a matter of convenience and fairness to the parties hereto, this Court should assume and exercise pendent jurisdiction over this claim.

53. The above-described facts constitute a combination or conspiracy between the named Defendants and other Doe Defendants, in restraint of trade, thereby violating H.R.S §480-4, for which Defendants are liable for compensatory damages, to be trebled under H.R.S. §480-13.

FIFTH CLAIM FOR RELIEF

(Unfair Trade Practice)

54. Plaintiffs repeat and reallege paragraphs 51 and 52 of this Complaint with the same force and effect as though fully set forth herein.

55. The above-described facts constitute an unfair practice, in violation of H.R.S. §480-2, for which Defendants are liable for compensatory damages, to be trebled under H.R.S. §490-13.

SIXTH CLAIM FOR RELIEF

(Refusal to Deal)

56. Plaintiffs repeat and reallege paragraphs 51 and 52 of this Complaint with the same force and effect as though fully set forth herein.

57. The above-described facts constitute a refusal to deal, in violation of H.R.S. §480-6, for which Defendants are liable for compensatory damages, to be trebled under H.R.S. §480-13.

SEVENTH CLAIM FOR RELIEF

(Interference with Economic Advantage And/Or Inducement to Breach of Contract)

58. By the conduct described above, Defendants interfered with the prospective economic advantage of C & W and/or induced others to breach their contract(s) with C & W.

EIGHTH CLAIM FOR RELIEF

(Negligent Infliction of Emotional Distress Upon Cher Mungovan)

60. Plaintiffs repeat and reallege paragraphs 51 and paragraph 52 of this Complaint with the same force and effect as though fully set forth herein.

61. By the conduct described above, Defendants breached their duty to act in a prudent manner to avoid the negligent infliction of emotional distress upon Cher Mungovan. As a consequence of Defendants' acts, Cher Mungovan sustained emotional distress, for which Defendants are liable to her.

NINTH CLAIM FOR RELIEF

(Negligent Infliction of Emotional
Distress Upon Walter Mungovan)

62. Plaintiffs repeat and reallege paragraphs 51 and paragraph 52 of this Complaint with the same force and effect as though fully set forth herein.

63. By the conduct described above, Defendants breached their duty to act in a prudent manner to avoid the negligent infliction of emotional distress upon Walter Mungovan. As a consequence of Defendants' acts, Walter Mungovan sustained severe emotional distress, for which Defendants are liable to him.

TENTH CLAIM FOR RELIEF

(Intentional Infliction of Emotional
Distress Upon Cher Mungovan)

64. Plaintiffs repeat and reallege paragraphs 51 and paragraph 52 of this Complaint with the same force and effect as though fully set forth herein.

65. Defendants intentionally and maliciously engaged in the above-described conduct, inflicting emotional distress upon Cher Mungovan. As a consequence of Defendants' acts, Cher Mungovan sustained severe emotional distress, for which Defendants are liable to her.

ELEVENTH CLAIM

(Intentional Infliction of Emotional
Distress Upon Walter Mungovan)

66. Plaintiffs repeat and reallege paragraphs 51 and paragraph 52 of this Complaint with the same force and effect as though fully set forth herein.

67. Defendants intentionally and maliciously engaged in the above-described conduct, inflicting emotional distress upon Walter Mungovan. As a consequence of Defendants' acts, Walter Mungovan sustained severe emotional distress, for which Defendants are liable to him.

WHEREFORE, Plaintiffs pray:

1. That Plaintiffs recover their damages

sustained as a result of Defendants' violations of Federal and State antitrust laws, which, when ascertained, must be trebeled as required by said laws;

2. That Defendants be enjoined from continuing their unlawful conduct in violation of the Federal and State antitrust laws;

3. That Plaintiffs recover their damages sustained as a result of Defendants' violations of the above-referenced labor laws;

4. That Plaintiffs recover their damages sustained as a result of Defendants' violation of anit-racketeering laws, which, when ascertained, must be trebeled as required by 18 U.S.C. §1964(c);

5. That Plaintiffs recover punitive and exemplary damages pursuant to their Second, Seventh, Tenth and Eleventh claims;

6. That Plaintiff be awarded reasonable attorneys fees;

7. That Plaintiffs recover the cost of litigation; and

8. That Plaintiffs be awarded such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, July 14, 1983.

BUCHALTER, NEMER, FIELDS,
CHRYSTIE & YOUNGER
A Professional Corporation
ARTHUR CHINSKI
HARRY G. MELKONIAN
JOVINA HARGIS
OLYMPIA L. PACHARES
1900 Avenenue of the Stars
Suite 1780
Los Angeles, California 90067

DAMON, KEY, CHAR & BOCKEN
A Law Corporation
CHARLES H. HURD
PETER J. HERMAN
10th Floor, City Bank Building
810 Richards Street
Honolulu, Hawaii 96813

By Peter J Herman for
Charles H. Hurd

Attorneys for Plaintiffs
C & W CONSTRUCTION,
CHER MUNGOVAN and WALTER
MUNGOVAN

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

C & W CONSTRUCTION COMPANY,)
a sole proprietorship, CHER)
MUNGOVAN AND WALTER MUNGOVAN,)
)
Plaintiffs,)
)
vs.)
)
BROTHERHOOD OF CARPENTERS)
AND JOINERS OF AMERICA,)
LOCAL 745, AFL-CIO; WILLIAM O.)
NISHIBAYASHI; RALPH TORRES;)
)
Defendants.)
)

CASE NO.

DEMAND FOR JURY
TRIAL

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on their claims and an advisory jury on their claims for equitable relief.

DAMON, KEY, CHAR & BOCKEN

CHARLES H. HURD

Attorneys for Plaintiffs
C & W CONSTRUCTION, CHER
MUNGOVAN and WALTER MUNGOVAN

[illegible] JUL [illegible] 10

Of Counsel:
DAMON, KEY, CHAR & BOCKEN
Attorneys at Law
A Law Corporation

CHARLES H. HURD 1702-0
PETER J. HERMAN 3109-0
10th Floor, City Bank Building
810 Richards Street
Honolulu, Hawaii 96813
Telephone: 531-8031

BUCHALTER, NEMER, FIELDS,
CHRYSTIC & YOUNGER
ARTHUR CHINSKI
OLYMPIA L. PACHARES
1900 Avenue of the Stars, Suite 1700
Los Angeles, California
Telephone: (213) 990-2165

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

C & W CONSTRUCTION COMPANY, a sole proprietorship, CHER MUNGOVAN AND WALTER MUNGOVAN, Plaintiffs, vs. BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL 745, AFL-CIO; WILLIAM O. NISHIBAYASHI; RALPH TORRES; JOHN DOES 1-6100; JANE DOES 1-6100; DOE CORPORATIONS 1-20 Defendants.	CIVIL NO. 75261 AMENDED COMPLAINT; DEMAND FOR JURY TRIAL; SUMMONS

AMENDED COMPLAINT AND SUMMONS

Plaintiffs allege the following amended complaint:

I.

PARTIES

1. C & W Construction Company (hereafter called "C & W") is a sole proprietorship of Walter Mungovan, with

its principal place of business located at Kihei, Maui, in the State of Hawaii. C & W is in the business of providing general contracting services in the residential building and construction industry.

2. Walter Mungovan has no state of residence at the time of filing this amended complaint; he was a resident of Kihei, Maui, in the State of Hawaii and was a management employee of C & W, at all time relevant to this Amended Complaint.

3. Cher Mungovan is a resident of Kihei, Maui in the State of Hawaii; she was a management employee of C & W, at all time relevant to this Amended Complaint.

4. The Brotherhood of Carpenters and Joiners of America, Local 745, AFL-CIO (hereinafter called the "Hawaii Carpenters Union") is an unincorporated association and a labor organization, having its principal office located in Honolulu, in the State of Hawaii.

5. Ralph Torres (hereater called "Torres") is a resident of the County of Maui in the State of Hawaii; he was an agent, representative and employee of the Hawaii Carpenters Union, serving as a "business agent", at all times relevant herein.

6. William O. Nishibayashi (hereafter called "Nishibayashi") is a resident of the County of Maui in the State of Hawaii; he was an agent, representative and employee of the Hawaii Carpenters Union, serving as a "business agent", at all times relevant herein.

7. Doe Defendants are sued under fictitious names because Plaintiffs do not yet know their identities or the exact manner in which they are responsible for the acts

described herein. They are members, agents, employees and/or representatives of the named Defendants. Plaintiffs ask leave of Court to identify the Doe Defendants by their true names, as Plaintiffs learn their identities.

II.

FACTS

8. In 1979, Cher and Walter Mungovan founded C & W to conduct a general construction contracting business on the island of Maui, in the State of Hawaii. Walter Mungovan was a journeyman carpenter himself and Cher Mungovan was experienced in business. C & W specialized in residential work, building custom houses on the island of Maui. In the twelve months preceding the events described in this Amended Complaint, C & W had a gross income in excess of $500,000.00. By the end of 1980, C & W was working on three general contracting jobs, as follows:

(a) 375 Front Street, Lahaina, Maui;
(b) 3448 Hookipa Place, Kihei, Maui; and
(c) 634 Laniolu Place, Kihei, Maui,

as well as one sub-contracting job. By the end of 1980, C & W employed fifteen carpenters and masons, as well as other personnel.

9. In December 1980, Nishibayashi informed Walter Mungovan that the Hawaii Carpenters Union had decided to target C & W for an organizational campaign, for the purpose of obtaining a union contract signed by the principals of C & W. During the course of this discussion, Nishibayashi threatened violent consequences if C & W did not immediately

sign a union contract. In addition, Nishibayashi threatened to picket C & W's three job sites if no union contract was signed. Thereafter, other and similar demands were made by Torres and other agents of the Hawaii Carpenters Union, for C & W to recognize and bargain with the union, as the collective bargaining representative of C & W's employees.

10. Walter Mungovan, acting for C & W, refused Nishibayashi's demand to execute a union contract, and refused similar demands at later dates. Walter Mungovan informed Nishibayashi in their December 1980 meeting, that C & W was already paying wages to its employees, of at least union scale or better. Walter Mungovan offered to negotiate for a union contract, when C & W reached a developmental stage of constructing non-residential projects -- a submarket wherein competitors are typically larger and already unionized with correspondingly higher costs.

11. On January 6, 1981, acting at the direction of Nishibayashi and Torres and other leaders of the Hawaii Carpenters Union, union members began picketing the three C & W job sites. For more than three months, the Hawaii Carpenters Union picketed at least one C & W job every day and usually at least two jobs each day. The picket signs read as follows:

> AFL-CIO Carpenters Union Local 745 protests the substandard wages, hours or conditions of employment on this job by C & W Contracting. AFL-CIO Carpenters Union Local 745 does not intend by this picket line to induce or encourage the employee of any other employer to engage in a strike or concerted refusal to work. This picket line supplied by the AFL-CIO Carpenters Union Local 745.

12. During the first week of the pickets, C & W requested that its employees not work on the three job sites. During that time, C & W asked its employees if they would be willing to return to work. The employees agreed to do so, crossing the picket lines to work on January 12, 1981 and each working day thereafter, whenever materials were available.

13. On February 9, 1981, the National Labor Relations Board (hereafter called "NLRB") held a representation election, at the request of C & W. The employees of C & W unanimously voted to have no representation by the Hawaii Carpenters Union.

14. The Regional Director of the NLRB issued a complaint alleging that the Hawaii Carpenters Union's pickets at C & W's three job sites were illegal. The NLRB brought suit in the United States District Court for the District of Hawaii to enjoin the pickets.

15. Despite the election vote of the employees of C & W and the NLRB proceedings, the Hawaii Carpenters Union continued to picket at one or more of the C & W job sites until April 16, 1981.

16. C & W had entered into contracts for the supply of materials to the three job sites, listed above, as well as a sub-contracting job site. Agents or representatives of the Hawaii Carpenters Union, specifically including but not limited to Torres, wrongfully influenced the materials suppliers for C & W to not deliver various supplies to C & W's job sites.

17. C & W's suppliers failed or refused to deliver various materials, including concrete, crushed rock, concrete blocks, lumber, and glass.

18. In addition to the suppliers, the Hawaii Carpenters Union influenced, contacted or coerced others who were obligated to perform contractual services for C & W, not to cross picket lines of the Hawaii Carpenters Union.

19. In the NLRB proceedings, Nishibayashi, Torres and others lied in affidavits submitted to the United States District Court for the District of Hawaii, in order to further their illegal purpose and to damage C & W.

20. After the NLRB proceedings, Nishibayashi and Torres were each indicted and convicted of four counts of perjury and false statement in the United States District Court of the District of Hawaii.

21. As a result of the actions of the Hawaii Carpenters Union, C & W suffered injury to its business, including but not limited to the following:

(a) delay in completing jobs;

(b) higher costs;

(c) termination of a job in progress;

(d) lost opportunities for other jobs;

(e) damage to business representation;

(f) loss of employees who could not be kept employed on a full-time basis;

(g) higher interest rates on financing; and

(h) lost profits.

22. In addition to the business injuries suffered by C & W, both Cher and Walter Mungovan suffered emotional distress and damage to their reputations as efficient

business persons and fair employers, as a direct and proximate result of the actions of the Hawaii Carpenters Union.

23. All of the above actions were undertaken by agents or representatives of the Hawaii Carpenters Union, and the named Defendants, while acting within the authority delegated to them, or ratified by the Hawaii Carpenters Union.

III.

CLAIMS

FIRST CLAIM FOR RELIEF - CONSPIRACY IN RESTRAINT OF TRADE (H.R.S. §480-4)

24. The above-described facts constitute a combination or conspiracy between the named Defendants and other Doe Defendants, in restraint of trade, thereby violating H.R.S §480-4, for which Defendants are liable for compensatory damages, to be trebled under H.R.S. §480-13.

SECOND CLAIM FOR RELIEF - UNFAIR TRADE PRACTICE

25. The above-entitled facts constitute an unfair trade practice, in violation of H.R.S. §480-2, for which Defendants are liable for compensatory damages, to be trebled under H.R.S. §480-13.

THIRD CLAIM FOR RELIEF - REFUSAL TO DEAL

26. The above-entitled facts constitute a refusal to deal, in violation of H.R.S. §480-6, for which Defendants are liable for compensatory damages, to be trebled under H.R.S. §480-13.

FOURTH CLAIM FOR RELIEF - INTERFERENCE WITH ECONOMIC ADVANTAGE AND/OR INDUCEMENT TO BREACH OF CONTRACT

27. By the conduct described above, Defendants interfered with the prospective economic advantage of C & W and/or induced others to breach their contract(s) with C & W.

FIFTH CLAIM FOR RELIEF - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS UPON CHER MUNGOVAN

28. By the conduct described above, Defendants breached their duty to act in a prudent manner to avoid the negligent infliction of emotional distress upon Cher Mungovan. As a consequence of Defendants' acts, Cher Mungovan sustained emotional distress, for which Defendants are liable to her.

SIXTH CLAIM FOR RELIEF - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS UPON WALTER MUNGOVAN

29. By the conduct described above, Defendants breached their duty to act in a prudent manner to avoid the negligent infliction of emotional distress upon Walter Mungovan. As a consequence of Defendants' acts, Walter Mungovan sustained severe emotional distress, for which Defendants are liable to him.

SEVENTH CLAIM - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS UPON CHER MUNGOVAN

30. Defendants intentionally and maliciously engaged in the above-described conduct, thereby inflicting emotional distress upon Cher Mungovan. As a consequence of Defendants' acts, Cher Mungovan sustained emotional distress, for which Defendants are liable to her.

EIGHTH CLAIM - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS UPON WALTER MUNGOVAN

31. Defendants intentionally and maliciously engaged in the above-described conduct, thereby inflicting emotional distress upon Walter Mungovan. As a consequence of Defendants' acts, Walter Mungovan sustained emotional distress, for which Defendants are liable to him.

IV.

PRAYER FOR RELIEF

Plaintiffs therefore pray that this Court grant the following relief:

1. For C & W:

(a) damages in a sum not yet ascertained and to be proven at trial, to compensate C & W for business injury pursuant to violations of H.R.S. §§480-2, 480-4, and 480-6;

(b) treble damages under H.R.S. §480-13, based upon the compensatory damages set forth in subparagraph 1.(a)., above;

(c) compensatory damages for tortious interference with economic advantage and/or inducement to breach of contract;

(d) exemplary or punitive damages based on the tortious interference and inducement, described in subparagraph 1.(c), above;

2. For Cher Mungovan:

(a) damages for negligent and/or intentional infliction of emotional distress; and/or

(b) exemplary or punitive damages based upon the intentional infliction of emotional distress upon Cher Mungovan.

3. For Walter Mungovan:

(a) damages for negligent and/or intentional infliction of emotional distress; and

(b) exemplary or punitive damages based upon the intentional infliction of emotional distress upon Walter Mungovan.

DATED: Honolulu, Hawaii, July 14, 1983.

DAMON, KEY, CHAR & BOCKEN

CHARLES H. HURD
PETER J. HERMAN

BUCHALTER, NEMER, FIELDS,
CHRYSTIE & YOUNGER

Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on their claims and damages.

CHARLES H. HURD

Of Counsel:
DAMON, KEY, CHAR & BOCKEN
Attorneys at Law
A Law Corporation

CHARLES H. HURD 1702-0
PETER J. HERMAN 3109-0
10th Floor, City Bank Building
810 Richards Street
Honolulu, Hawaii 96813
Telephone: 531-8031

BUCHALTER, NEMER, FIELDS,
CHRYSTIC & YOUNGER
ARTHUR CHINSKI
OLYMPIA L. PACHARES
1900 Avenue of the Stars
Suite 1700
Los Angeles, California
Telephone: (213) 990-2165

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

C & W CONSTRUCTION COMPANY, a sole proprietorship, CHER MUNGOVAN AND WALTER MUNGOVAN, Plaintiffs, vs. BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL 745, AFL-CIO; WILLIAM O. NISHIBAYASHI; RALPH TORRES; JOHN DOES 1-6100; JANE DOES 1-6100; DOE CORPORATIONS 1-20, Defendants.	CIVIL NO. 75261 SUMMONS

SUMMONS

STATE OF HAWAII

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned to serve upon Charles H. Hurd and Peter J. Herman, plaintiffs' attorneys, whose address is 810 Richards Street, 10th Floor, Honolulu, Hawaii 96813, an answer to the Amended Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Amended Complaint.

DATED: Honolulu, Hawaii, JUL 15 1983.

B. NAK[illegible]

Clerk of Court

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA,

GREAT FALLS DIVISION

HAINES PIPELINE, Plaintiff, vs. DAN JONES, et al., Defendants.	)	Cause No. CV-83-94-GF

EXCERPT OF PROCEEDINGS

Federal Building
Great Falls, Montana 59401
August 11, 1983

BEFORE: THE HONORABLE PAUL G. HATFIELD

APPEARANCES:

DONALD C. ROBINSON
DOUGLAS A. BUXBAUM
Poore, Roth & Robinson
1341 Harrison Avenue
Butte, Montana 59701

Attorneys for Plaintiff,

BENJAMIN W. HILLEY
EMILIE LORING
Hilley & Loring
121 Fourth Street North
Great Falls, Montana 59401

JOSEPH W. DUFFY
Attorney at Law
121 Fourth Street North
Great Falls, Montana 59401

PATRICK D. McKITTRICK
TIMOTHY J. McKITTRICK
McKittrick Law Firm
622 Strain Building
Great Falls, Montana 59401

BARRY L. HJORT
Hjort & Lopach
Arcade Building
Helena, Montana 59601

Attorneys for Dan Jones, et al.

THE COURT: Come forward before the Clerk and be sworn.

RICHARD HAUGE, being first duly sworn, testified as follows:

THE WITNESS: Richard B. Hauge, H-a-u-g-e.

THE COURT: Counsel.

MR. ROBINSON: Thank you, Your Honor.

DIRECT EXAMINATION BY MR. ROBINSON:

Q State your address, Mr. Hauge.

A Box 445, Avon.

Q And what is your professional occupation?

A Undersheriff of Powell County.

Q How long have you held that position?

A About three years.

Q And prior to that time, were you a deputy sheriff in that County?

A Right.

Q Since when?

A November 6th, 1972.

Q All right. Why don't you take your coat and hang it over on the rail so you will be comfortable.

Directing your attention to the Haines Pipeline

Construction project that's presently ongoing in Powell County, when did you first become involved in any law enforcement activity in connection with the Haines Pipeline Company?

A I'd have to take a look at my briefs.

Q Could you tell the Court what incident?

A It was damage to a bunch of equipment at the Haines Pipeline.

Q All right. And would you refer to your notes and give the Court the date that investigation took place.

A January 14th, 1983.

Q You said January, did you mean July?

A July 14th.

Q What was the nature of the report or complaint?

A A substance had been poured into the Cat motor and left running, abrasive substance, to damage the motor in the Caterpillar.

Q Did you ascertain how those foreign substances had been put into the Caterpillar motor?

A The oil caps had been broken off, the locks had been broken, so the oil caps were removed and it was poured in there.

Q How many Caterpillar tractors were damaged?

A Seven.

Q And that causes damage to the motors of the equipment;

is that correct?

A That is correct.

Q And is that investigation still ongoing?

A Yes.

Q All right. When was your next contact with this, next significant contact with this pipeline project?

A I don't know, it's when they had that deal at Morrell, I just helped.

Q If I directed your attention to Saturday, July 23rd, 1983, would that assist you in recalling the next significant involvement?

A Yes, that is correct.

Q All right. Tell the Court what you saw that day, what your action -- activities were that day in connection with that incident.

A I started up to assist, the Anaconda Police got to our County line and met a caravan of busses and union people.

Q All right. You say the caravan of busses, and were there vehicles other than the busses?

A Right.

Q How many vehicles?

THE COURT: Mr. Duffy wishes to --

MR. DUFFY: Your Honor, it's very difficul for us to hear the witness down here.

THE COURT: I apologize to you, the sound system is not working. The man promised me six months ago he'd fix it, but he hasn't.

MR. ROBINSON: Please speak up.

MR. DUFFY: Thank you.

Q (By Mr. Robinson) So what did you do, where did you see these vehicles, this caravan?

A On Interstate 90 heading towards Deer Lodge.

Q From where, do you know where were they headed from?

A From Deer Lodge County.

Q So what did you do then, what did you do?

A Followed them into Deer Lodge.

Q All right. Then what happened next?

A We went out to the access road to Freeze Out, and part of them came out there.

Q Tell the Court where Freeze Out is, because I'm sure the Court is not familiar with the geography and maz out there to the pipeline.

A It's where the pipeline crosses -- the pipeline leav the Deer Lodge Valley and heads toward the Continen Divide.

Q Is it known as Freeze Out Hill, is there a hill the

A No, it's just a creek Freeze Out.

Q So you followed this caravan out to this Freeze Out area; is that correct?

A To a line there at the Freeze Out area, right.

Q And what did you see when you got to that point?

A I got ahead of them and stopped them there.

Q All right. And did you --

A And they --

Q What did you do then at that point?

A Told them they could go no further, it was private property on the other side of that gate.

Q And this was at a gate, near a gate?

A Right.

Q Did you talk to an individual who you later found out was a Mr. James Mace (phonetic) of the Operating Engineers Union?

A I'm positive I did, yes.

Q At that time you did not know Mr. Mace; is that correct?

A That is correct.

Q And what did you tell him?

A Told him that was private property, he could not go onto it.

Q Approximately how many people were in this bus or in this garrison group, approximately, your best estimate?

A I'd say there were 150, at least.

Q Okay. Did you see any people carrying weapons or sticks or axe handles or anything of that nature?

A Yes.

THE COURT: What does that mean? One at a time, I mean, that kind of a compound question doesn't result in a whole lot of information.

Q (By Mr. Robinson) What did you see people -- kinds of objects or objects did you see people carrying?

A Axe handles and pieces of boards.

Q Did you see any alcoholic beverages?

A Yes.

Q Tell the Court what you saw.

A A pickup with a beer connection in the back of it and liquor cups around.

Q Okay. Did --

A People acting intoxicated.

Q Did this group appear to be together --

A Yes.

Q -- with the bus? Now, did an incident develop concerning a rancher at that place?

A About 50 of them standing in front of the rancher's gate, and he couldn't go out to get -- to work in the field.

Q Did a dispute occur between these people and the rancher?

MR. PAT McKITTRICK: I'm going to object, Your Honor, leading questions.

THE COURT: I'm going to allow the answer, but please don't lead. You may answer, tell us what happened.

A The rancher drove out to his gate, and there was a lot of hollering. I was quite a ways from it, I didn't hear what they said, but the rancher went back to the house, evidently called the Sheriff's Office, because we -- the Sheriff's Office radioed me to unblock that gate to the ranch so he could go to work.

THE COURT: Counsel.

Q (By Mr. Robinson) All right. Thank you. How long were you there at that place at that time?

A Probably an hour, hour-and-a-half somewhere.

Q All right. What happened then after that?

A They just all turned around and went back to Deer Lodge.

Q Go ahead.

A When they asked me to unblock the gate, I walked down, and they did unblock the gate. They were all very polite.

Q Was the gate blocked at one point?

A Right. It wasn't really blocked, they were all standing there so the car couldn't go through, right.

Q Where did the people go in this group then after that?

A They went back to Deer Lodge.

Q Did you go back to Deer Lodge at some point and observe them?

A Yes.

Q What was the condition of these people at that time, did you observe the condition of some of the people in the group?

A Some of them appeared to be intoxicated.

Q Did you make any arrests that day?

A No.

Q All right. The next day, the day following, July 24th, did you have any investigation or activity in connectio with this pipeline project?

A I went up to Warm Springs and stood by while the union picketed there for probably two hours.

Q How many people were out there at that time?

A I don't know for sure, I was on the other side of the highway from them and I couldn't count them.

Q Now, the following week, July 25th, to your knowledge did the Pipeline Company operate that week?

A No.

Q When did they resume operations then?

A I believe it was on August 1st.

Q Monday, August 1st?

A I believe so.

Q All right. Did the picketing commence again that day?

A Yes, there were a few people there.

Q Where were they picketing?

A Where the pipeline crosses the county road straight east of Deer Lodge.

Q How many people did you observe out there that day?

A Eight or nine.

Q Eight or nine. Did you have any conversation with any of the people picketing?

A Yes.

Q Did you have any conversation with them about access, Right-Of-Way and property ownership?

A Right.

Q Tell the Court what conversation you had with these people at that time?

A They asked me if there was an access road getting into that area, 'Freeze Out,' and I told them no, it was all private property.

Q This was again at the Freeze Out area that you talked about earlier?

A No, it was at the road going up Emery Mine, which is -- about a mile away from the Freeze Out area road.

Q Okay. At that time did you ascertain the identity or learn the identity of certain representatives of the unions?

A Yes.

Q Who did you -- whose identity did you learn?

A James Mace, Dan Hillard (phonetic).

Q Tell the Court how these individuals were introduced to you or represented to you, in what capacity did you understand them to be operating?

A As union officials.

Q Can you identify Mr. Mace with a particular union?

A I believe it's 400 in Butte.

Q Operating Engineers 400?

A I believe so.

Q And Mr. Hillard?

A Mr. Hillard is out of the Oklahoma -- I don't know what union he represents.

Q Did you do a license-plate check on these vehicles that were there at the scene?

A Yes.

Q Did those checks corroborate that Mr. Mace and Mr. Hillard or that the unions they represented owned the vehicles that were at the scene?

A Yes.

Q That day, did you have a conversation with Mr. Hillard about having his -- Well, did you see any out-of-state vehicles at the scene?

A Mr. Hillard had out-of-state plates when he was there that morning, and drove into Deer Lodge and got County plates.

Q Did you have a conversation with Mr. Hillard about putting Montana plates on his car?

A Yes.

Q Tell the Court --

A He just asked to borrow a screw driver so he could put them on.

Q So he took off Oklahoma plates that day and put on Montana plates; is that correct?

A Right.

Q Directing your attention to Thursday, August 4th, did you receive any information through law enforcement agencies regarding any activities or significant activities that were occurring or was about to occur with regard to the Haines Pipeline?

A Yes.

Q Tell the Court what law enforcement reports or information you received regarding this particular Haines Pipeline?

A Sheriff Ash of Forsyth informed us there were now busses coming from Colstrip to picket.

Q When was your information, did you receive that through a teletype or some sort of law enforcement communication?

A Teletype and phone calls, right.

Q Did you receive an estimated time of arrival of the busses?

A I received two conflicting times, right.

Q All right. In any event, was it the busses were to arrive on what day?

A The next morning.

Q All right. The next morning, Friday, August 5th, did you ascertain that a bus or busses had in fact arrived in the Deer Lodge or Powell County areas?

A Received word a bus had arrived in the Warm Springs area and Deer Lodge County.

Q What did you do personally in response to that?

A Started gathering up help.

Q Where did you proceed?

A I deputized an assault team from the prison, which we have access to in cases of emergency, and called Lewis & Clark County Sheriff's Office and asked for assistance to cover the Yellowstone area.

Q All right. Did you see the bus then in Deer Lodge that day?

A Yes.

Q Where was the bus?

A At the Four B's Restaurant.

Q Did you see people get off the bus?

A Yes.

Q Now, did you have at that time a conversation with Jim Mace?

A Yes.

Q At that point, at that time, did you know who he was and who he represented?

A Yes.

Q Tell the Court the conversation you had with Mr. Mace.

A I told him that I was not going to stand for any violence or trespassing.

Q Did you know --

A They could picket peacefully if they wanted to in Powell County, but no violence.

Q And did -- At that time, did you discuss with them their intentions as to what they were going to do next?

A No.

Q All right.

THE COURT: This was the Four B's in the town of Deer Lodge?

THE WITNESS: Right, right on the outside.

Q (By Mr. Robinson) Did you talk to Mr. Hillard or anyone associated with him?

A I talked to a fellow who was with him, but I didn't know his name.

Q Was that individual, had you identified him as having been with Mr. Hillard on some days or weeks prior to this time?

A Right.

Q What was the conversation with him?

A Same thing, told him I didn't want any violence.

Q Were there vehicles in addition to the bus?

A Yes, several.

Q How many other vehicles?

A Several, I couldn't count them.

MR. DUFFY: I didn't hear the answer.

MR. ROBINSON: Several.

Q (By Mr. Robinson) Did the bus leave Deer Lodge and proceed someplace else?

A Yes, proceeded north to Garrison on to Elliston.

Q What did you do at that time?

A I was just patrolling the back roads there.

Q Did you have a partner with you?

A Yes.

Q What was his name?

A Boyd Goodabeer (phonetic).

Q Did you receive a law enforcement radio communication regarding an incident that was in progress?

A Right.

Q Tell the Court what incident was in progress or what you heard on the radio.

A Mr. Mel Rauch from the Butte Sheriff's Department said that a group of people had broken off from the main group and were barrel heading on Interstate 90 going north, and he was following.

THE COURT: They were going where?

THE WITNESS: They were driving on an access road parallelling Interstate 90.

///

Q (By Mr. Robinson) And he was in pursuit or following?

A Just following them, okay.

Q Did he ask for assistance?

A Not at the time, no.

Q All right. Did you later hear Officer Rauch ask for assistance?

A Yes.

Q What did you do in response to that?

A I radioed the Sheriff's Office to get my deputies out on the scene, and went up to Freeze Out.

Q You went up to Freeze Out. And would you tell the Court, were there Haines Pipeline project employees working there at that area?

A Yes.

Q Then describe to the Court what you observed, what you saw as you headed up towards the Freeze Out Hill area.

A Mr. Rauch told me they sawed down a gatepost with a chainsaw to get in this area, and then I observed that when I went through it. When I got up to the top, the hill next to the gate, there was a Butte car blocking that gate.

Q Then what did you do?

A I drove around to another gate and went in that pasture.

Q Do you know the ownership of the property behind the gate that was sawed off, is it private?

A Jim Tomlinson, Deer Lodge.

Q That is a private individual?

A Right.

Q And the pipeline Right-Of-Way or easement is on his property, is that your understanding?

A Part of it, yeah.

Q Did you get the vehicle's identification or license number of the vehicle that was blocking the gate?

A Yes, I did.

Q Now, you said you went through another gate, then what did you do?

A I drove over to where the construction site or the site was where the Haines people were working, and union people were --

Q Did you --

A -- confronting them.

Q Did you see other vehicles on private property that appeared to be out of place or not there with permission?

A Several.

Q Did you see any altercation going on?

A Yes.

Q Tell the Court what you saw.

A Seen a large group of union people advancing on a smaller group of Haines Pipeline workers and throwing rocks, and saw guns.

Q Did you see --

A And dynamite blasts.

Q Did you see or hear anything?

A Lots of obscene language.

Q The group was advancing. How many would you estimate of the group that was advancing on the pipeline employees?

A There were at least 30 or 40.

Q Did you hear a shot?

A Yes.

Q Then did you hear an explosion?

A Yes.

Q Did you know at that time what had happened regarding that shot or that explosion?

A No, we were still advancing.

Q Did you talk about the group that was throwing rocks. Did you see any other objects in their hands by any of them?

A There was some clubs, yes, but not too many in their hands, I would say.

Q Did you observe any damage to equipment?

A Yes.

Q What did you observe?

A There was trucks there that had the windows and mirrors broken off of them, there was a big oil spill on the ground there where a 55-gallon barrel of oil had been tipped over and broken open.

Q Okay. Tell the Court what happened next, and your contact with the people in the groups.

A My partner Boyd Goodabeer had his equipment on, his radio, other equipment, so I took off down between them. I had to get mine on, so I was about a minute behind him. We got between the two factions and separated them.

Q Did you have or direct any communications to the larger group of people?

A Yes.

Q Tell the Court what was said.

A I told them they were trespassing, they had no business on that property.

Q Did you arrest anyone at that time, and if so, why?

A First I arrested all the Haines people that was there using weapons, throwing dynamite, lit dynamite. Confiscated their guns, because that is the first one you have to do to control the riot is to get the firearms. That seemed to satisfy the union people, so they backed off.

Q Then did you have a conversation with the union people regarding arresting them for the trespassing situation?

A Yes, I told them I would have to hold all of them.

Q Did anyone respond to that?

A Mr. Mace said he would be responsible for the group and any damage that had been incurred and for the trespassing.

Q So did you arrest him?

A Yes.

Q And what was he charged with?

A Criminal trespass and criminal mischief.

Q Criminal mischief is in connection with what?

A Sawing down the gate and the damage done to the vehicles, equipment.

Q This was the same Mr. Mace that you had talked to a short while before at the Four B's Cafe regarding trespassing and violence?

A That is correct.

Q Did you observe any alcohol?

A Yes.

Q Tell the Court what you saw.

A Two kegs of beer in a stock watering tank in the back end of a pickup.

Q Did you ascertain or engage in any procedure to ascertain the identity of all of the individuals that had no authority to be on the property or their vehicles?

A Right, I took down all the license numbers, tried to get all the names. I didn't get all the names, but I got -- I talked to the County Attorney on the radio, he said to get all their names and bring Mace in.

Q Did you ascertain that in addition to Mr. Mace, that a Larry Personger (phonetic) was also involved in the trespass? And if you need to refer to your notes, please refer to any notes you have to assist you in answering that question.

A Yes, he was there, but I didn't know he was a union official at the time.

Q Now, do you have a procedure whereby you ascertain the ownership and registration of vehicles in the state of Montana if you have ascertained their license number?

A Yes, sir.

Q Would you tell the Court what you can do to obtain that information.

A Send a teletype to the National Communications Center in Helena and they will computer -- they read out this that comes back on the teletype, the owner and description of the vehicle, when licensed.

Q I'm handing you what's been marked and identified as Plaintiff's Exhibit 1-A, 1-B, 1-C and 1-D, and ask you if you can identify those documents, please.

A They are teletypes I received from Helena.

Q All right. Was there a vehicle, a '77 pickup, license number 5T-18666 that was on the Freeze Out portion of the pipeline project on the Right-Of-Way at that time?

A Yes, sir, that is the pickup that had the beer in the back of it.

Q That was the pickup that had the beer?

A Right.

Q And to whom is that vehicle registered, who is the owner, registered owner of that vehicle?

MR. PAT McKITTRICK: I'm going to object to this line of questioning. The identification of vehicles has no reference to identifying any person who's been on the property. And that is specifically the Court ruling in the Shay case.

THE COURT: Overruled, go ahead.

A The vehicle was registered to the Operating Engineers, Local 400, 2737 Airport Road, Helena, Montana.

Q (By Mr. Robertson) Thank you. And is that shown by Plaintiff's Exhibit 1-A?

A Right.

Q All right. Turn to Plaintiff's Exhibit 1-B, if you would. Who was the vehicle that is described in that Exhibit that was identified as being trespassin on the pipeline Right-Of-Way at that time?

MR. PAT McKITTRICK: Your Honor, same objection.

THE COURT: Same ruling, go ahead.

A It was a Helena license 5-44973, licensed on a '83 Chrysler to International Union of 2737 Airport Road, Helena.

MR. DUFFY: I don't think I heard the whole answer, did he give it?

Q (By Mr. Robinson) Please repeat your answer to that, who was it licensed to?

A I said to the Internation Union of 2737 Airport Road, Helena.

MR. DUFFY: Thank you.

Q (By Mr. Robinson) Now, it appears to be International Union of -- and it doesn't have any finish on it. Can you explain why that is the case?

A No, I can't.

Q On the teletype, do you sometimes get abbreviations or words left off?

A Yes, sometimes.

Q Which of the two vehicles owned by the Operating Engineers Union had the beer?

MR. DUFFY: I'm going to object to that, I don't think it's been established which two vehicles were owned by the Operating Engineers.

THE COURT: You may restate.

Q (By Mr. Robinson) You testified as to two vehicles, and I think that you testified that one of them had beer in the vehicle. Can you tell which one?

A Yes.

MR. PAT McKITTRICK: Objection, Your Honor. I don't know if there is any culpability of a vehicle having beer.

THE COURT: What is your objection?

MR. PAT McKITTRICK: I don't understand the question.

THE COURT: Beer is not culpable. I'll overrule the objection.

MR. PAT McKITTRICK: The automobile is not culpable?

THE COURT: What was the question?

MR. ROBINSON: Which of the two vehicles he just described had the beer.

A The 1977 Chevy pickup, license number 5T-18666.

Q (By Mr. Robinson) Where was that vehicle parked?

A On private property.

Q Where specifically in the Freeze Out area?

A In, I think, the Rock Creek Cattle Company.

Q Did you ascertain the identity of the other vehicle?

A Yes.

Q All right. Incidentally, Officer, I have asked you to produce for identification slips through teletype. Were there more than four vehicles, how many vehicles total were out there that morning of people other than Haines?

A Sixteen.

Q Sixteen?

A Yes.

Q Okay. I have asked you to identify four, did you get identification for all 16?

A Yes.

Q All right. I'm going to direct your attention to four. The third one, Plaintiff's Exhibit 4, 1-C, if you could turn your attention to that. Please tell the Court the vehicle identification there and the State of Montana, state the registered ownership.

A License number 1-16160, and it's registered to Lawrence E. Hawe of 1903 Porter, Butte.

Q H-a-w-e?

A Right.

Q All right. Where was that vehicle, what was the significance of that particular vehicle, if anything?

A That was the vehicle that was blocking the gate at that pasture.

Q Directing your attention to Plaintiff's Exhibit D, I'll ask you if you can identify that document. You have previously identified it. And give a statement of ownership of any vehicles -- of other vehicles that you observed at the scene.

A It's license number 2T-7833.

Q Describe the vehicle, please.

A Chevy truck, Chevy pickup, '78, green in color.

Q What's the address?

A Union Post Office Box 1178, Great Falls.

Q And was that vehicle parked on the private property?

A Yes.

THE COURT: I'm not sure that I got your answer. It was registered to whom?

THE WITNESS: Must be abbreviated again, it's Construction and Gen, it says.

THE COURT: Okay. Very well. Thank you.

MR. ROBINSON: We stipulated, Your Honor, that the address is the same address as the Labor Union, Local 1334 in Great Falls.

I offer into evidence, Plaintiff's Exhibit 1-A, 1-B, 1-C and 1-D.

MR. PAT McKITTRICK: Your Honor, Montana State, AFL/CIO, objects for the reasons already given.

THE COURT: All right.

MR. HILLEY: Your Honor, the Defendant Pipeliners and Plumbers object, also, on the basis of materiality, it's not complete whatsoever. In fact, it's very vague, it's not very definite as far as who was there.

MR. HJORT: On behalf of Local 400 and the two main individual defendants, we will also join in the objections as voiced by Mr. McKittrick and Hilley.

THE COURT: Overrulled, the exhibits will be received.

Q (By Mr. Robinson) Did you personally see those vehicles?

A Yes.

Q Did you confiscate anything from one of the vehicles?

A Yes.

Q Tell the Court what.

A I confiscated the pump and hose to the one keg of beer that had been tapped.

MR. HILLEY: May I have that answer again, I didn't hear it.

THE COURT: A pump and hose to the one keg of beer that had been tapped; is that right?

Q (By Mr. Robinson) Did you later have a conversation with the union representative regarding that confiscation of that particular property?

A Right.

Q Who did you speak with?

A Dan Jones.

Q Where did that conversation occur?

A Deer Lodge.

Q What date, same day or --

A Yes.

Q Did you later release that property, and if so, to whom?

A On August 8th, 1983, I released the pump and tapper to Dan Jones.

Q Handing you what has been marked as Plaintiff's Exhibit 2, and ask you if you can identify that.

A Yes, I can.

Q What is it?

A It's a copy of the report.

Q Did you have any conversation with Mr. Jones about his support for the particular item?

A Yes, I told him that --

Q Tell the Court what was the conversation you had with him.

A He said I had no right to confiscate that, and I told him to control the riot situation I did have support to --

Q Did you discuss --

A -- confiscate.

Q -- in view of the ownership of that property, or how it had come to be there?

A Yes, sir, he said that he had signed for that from Clausen Distributing of Helena, Montana.

Q Did you return the equipment to him after he signed this requirement?

A Right.

MR. ROBINSON: Your Honor, I will offer Plaintiff's Exhibit 2.

MR. HILLEY: Your Honor, I will also object to the introduction of Plaintiff's Exhibit 2. I don't see the materiality, unless this pump and thing was used as a weapon or something. I don't know what the materiality of driving beer on private property is.

THE COURT: Overruled, it will be received.

Q (By Mr. Robinson) Since this Friday past, have you had a conversation with any union representatives regarding picketing or picketing activity, access activity and that sort of thing?

A Right.

Q When did you last talk with representatives of the union?

MR. HILLEY: Objection, Your Honor, I would like to have these representatives identified.

THE COURT: Yes, please, if you can.

MR. ROBINSON: Well --

THE COURT: Go ahead.

Q (By Mr. Robinson) I asked when, I would ask who and when.

A I can't remember when the last time was, it must have been about three days ago. I talked to --

Q Who did you talk to?

A Mr. Mace and Mr. Hillard.

Q Where did you talk to them?

A On the road out of going between Elliston, Montana, and the Snowshoe Creek.

Q And what activity were they engaged in?

A Peaceful picketing.

Q Did you have a discussion with them about access to the pipeline?

A I told them that that road had been abandoned or was in the process of being abandoned and was going to -- I thought it was private property that was being reverted back to the ranching.

Q And you told them what about this activity?

A Told them I thought they were trespassing again.

Q What did they say?

A They said no, they weren't, they had checked, and that it was a public road.

Q Did you later attempt to ascertain who was correct about that?

A Right.

Q What did you determine?

A That it was in fact and had been for a month, private property.

Q The road had been abandoned and reverted back to the landowner; is that correct?

A Right.

Q Did you have a conversation with Dan Jones regarding the release of Mr. Mace on bond?

A Right, he came and --

Q Can you tell the Court what you know about Mr. Jones' involvement with the release of Mr. Mace in custody.

A They were both in the room when they talked to the bondwoman and got the bond posted.

Q At the Four B's Restaurant in Deer Lodge on the morning of August 5th, how many law enforcement personnel were present?

A I don't know. There were several from Butte's department, several from Anaconda, and probably six law enforcement officers from Powell County.

Q You had sought and received all of the available assistance from local surrounding law enforcement agencies; is that correct?

A I asked Helena, Lewis & Clark County Sheriff's for assistance to cover the Elliston area.

Q Would you tell the Court what geographically the size of this particular area of law enforcement is attempting to cover here on this pipeline?

A Probably 40 or 50 miles.

THE COURT: Did Lewis & Clark respond to your request?

THE WITNESS: Yes.

THE COURT: How many officers did they send?

THE WITNESS: Twenty.

THE COURT: All right. And those were the people that we saw the pictures in the Tribune with riot gear and whatnot -- is that right -- they did come equipped?

THE WITNESS: Yes.

THE COURT: And that was at Elliston?

THE WITNESS: Right.

THE COURT: Okay. Thank you.

MR. ROBINSON: You may examine.

THE COURT: Cross.

CROSS-EXAMINATION BY MR. HILLEY:

Q Mr. Hauge, the several dates I'd like to go through with you in order to try to clear some of this up. I believe that you testified that on July the 14th, 1983, you responded to a call regarding Caterpillar tractors; is this correct?

A Right.

Q And these Caterpillar tractors had been damaged some way or somehow?

A Right.

Q When you got there, did you see any union people or any union representatives around this Caterpillar?

A Mr. Hillard drove by when I was examining one of the Caterpillars.

Q All right. Now, they weren't there when you first arrived; is this correct?

A No, no.

Q Now, is it your testimony that somehow this July 14th incident was connected to activities on the part of any labor organization?

A No, sir, I couldn't prove that, not yet, it's still under investigation.

Q All right. Now, you don't even know whether it is remotely union related right now -- is this correct -- in other words --

A What do you mean "this," sir? This incident that you are talking about?

Q July 14th; is that correct?

A No, I have no idea.

Q Okay. So let's put it this way, would it be fair to say that somebody damaged the Caterpillars, right?

A Right.

Q You don't know who, right?

A Right.

Q Okay. Now, let's go to July 23rd, okay. July 23rd, 1983, I believe from your testimony, straighten me out if I'm wrong, there was approximately 150 people you've testified that were there in this particular garrison; is this correct?

A At one site, right.

Q Okay. Now, on July the 23rd, 1983, and I assume that you covered all this during the picketing, including up until this point; is this correct?

A Right.

Q All right. Now, was this the most people that were ever there on the July the 23rd?

A I believe so.

Q Okay. Now, you talked about a caravan, I think you said, it moved into Deer Lodge, and if I'm not mistaken, you can correct me, they came from Warm Springs to Deer Lodge; is this correct?

A Yes, right.

Q Okay. Now, with 150 people in the cars, approximately --

A I said there were about 150 out there at the Freeze

Out site picketing, right.

Q Okay. Now, how did that differ from 150 people in the caravan as opposed to the Freeze Out site?

A They broke off and went all over the country there, they went to different areas of the pipeline.

Q In other words, you are saying that the caravan did not stay together, right?

A Right.

Q Now, how many people from Warm Springs arrived into Deer Lodge would you say approximately? I'm not going to hold you to any.

A I couldn't give you that figure, a lot of them.

Q Lot of people, okay. And were they all in line when they arrived in Deer Lodge, at least the ones that came into Deer Lodge?

A Yes.

Q All right. Now, you made a request of these people, didn't you, didn't you ask them to go to the Park there in Deer Lodge, this caravan?

A I didn't, I believe the Sheriff did.

Q Okay. The Sheriff asked them to go to the Park, right?

A I believe he did.

Q Okay. Incidentally, you happened to have two parks in Deer Lodge; isn't that right?

A Right

Q So the caravan split up, isn't this true, and part of them went to one park and part went to the other park as requested by the Sheriff?

A I couldn't tell you that, but they did go after they picketed that motel for awhile.

Q Now, when the caravan arrived in Deer Lodge, were they unruly, were they swearing, were they cussing out police officers, telling you off or anything of this nature?

A Not the police, no.

Q Okay. So they arrived peacefully in Deer Lodge?

A As far as the police were concerned, right.

Q Now, behind the caravan, you have that pretty well covered, didn't you, by the time it arrived from Deer Lodge?

A We were traveling with them, right ahead of them.

Q Had there been any violence at that time?

A Before they arrived in Deer Lodge?

Q Yes.

A Not before they arrived in Deer Lodge, no.

Q Well, when they were in Deer Lodge, was there any violence?

A Right, several acts of violence.

Q What were these acts?

A I don't know them all, I couldn't be everywhere at once. The police had several violent acts.

Q What can you say personally from your knowledge?

A Not too much, I was out on Freeze Out. I told you that this biggest caravan, and they were peaceful, except they were drinking.

Q Okay. Well, isn't it a matter of fact that the Governor's riot squad was behind the caravan when it came into Deer Lodge? Didn't they meet on July the 23rd, didn't they meet the caravan as they arrived in Deer Lodge and covered the flank?

A I have no idea what you're talking about. I didn't know the Governor had a riot squad.

Q All right. You said you called out this riot squad from --

A I did not.

Q Didn't you?

A I said I had an assault team deputized from the prison.

Q Maybe I'm using the wrong term. You called out the assault team, not the Governor?

A Which date was this?

Q On July 23rd, 1983.

A The Sheriff of Powell County was there, then. He done all the calling out what had to be done.

Q Okay. Now, you have testified that before this period, that they arrived in Deer Lodge, there was no violence, right?

A No violence in Powell County.

Q Okay. From Warm Springs, let's say the caravan went from Warm Springs to Deer Lodge --

A This would be violence in Deer Lodge.

Q Didn't you testify there hadn't been any violence up until this point?

A In Powell County, right.

Q Okay. So in Warm Springs, you say there was violence?

A Right.

Q What did you see?

A I didn't see any of it, I didn't get there.

Q Okay. Now, you have asked -- I think you testified, also, that on August the 5th, 1983, you requested other police officers; is this correct?

A That is correct.

Q Now, let's get a total of how many police officers responded to your call. Did you get anybody from where -- Now, can you give the Court an idea of how many police officers were there on August the 5th?

A Do I have to answer that?

THE COURT: Yes.

A Okay. Twenty from Helena I probably had -- The Sheriff was gone then, I was in charge of Powell County. I had 18.

Q (By Mr. Hilley) Eighteen from where, now?

A Powell County.

Q Okay. Twenty from Helena, 18 from Powell County, right?

A Right.

Q Now, I presume that if we add these things right, the number of police officers -- In other words, Helena --

A There were some from Silver Bow, some from Deer Lodge County, too.

Q Okay. Now, let's go to Silver Bow, okay. How many police officers from Silver Bow County?

A I'd have to -- I don't know.

Q Can you be approximate?

A No, I can't, it's too big a country to where they were covering to check on how many.

Q But a sizeable amount, would this be true?

A Right.

Q Okay. Now, what about from Anaconda, how many would you say?

A Couldn't tell you that, either, probably three or four cars, maybe more.

MR. HILLEY: Pardon me a second, Your Honor, may I have the Court's indulgence, I want to get a piece of paper.

Q (By Mr. Hilley) Now, on August 5th, there were prison police there too?

A Powell County deputies.

Q You deputized them?

A Right.

Q How many were there?

A Probably 12.

Q Now, could you estimate for me how many pickets or union people that you could see to be union people, how many were there really on August the 5th?

A By "there," you mean at Deer Lodge or Elliston or both places?

Q How many were all over from your observation?

A There were probably 150 all told.

Q I'm not trying to trap you, but didn't you say 150 until July 23rd was about the most there were there? We're just trying to find out how many are really there. Would you say as many were there on August

5th as were there on July 23rd?

A No, sir, I didn't say that. I said there were 150 in the Freeze Out area that day.

Q Okay. Well, I guess that's where I got mistaken, okay. Now, you've got how many from the prison?

A Twelve.

Q And I don't think I have Anaconda yet, do you have a number from Anaconda?

A About 10 guys.

Q And from Silver Bow, you don't know, correct?

A I don't know.

Q Would you say 18 or just guess?

MR. ROBINSON: I'm going to object, Your Honor, to guesses.

THE COURT: Sustained.

Q (By Mr. Hilley) Okay. Were these pickets on August the 5th, were they wearing any firearms?

A I did not see any.

Q Now, the police officers were wearing firearms, right?

A That is correct.

Q Do you think that now from your experience as a police officer, do you think 50 people, 50 police officers wearing firearms is adequate to control 150 people not wearing firearms?

A It depends upon the geography, where we're at, how many places you have to control.

Q Firearms is a pretty good equalizer?

A True, one of the best is a shotgun.

Q Right now --

MR. PAT McKITTRICK: I'm sorry, I didn't hear that answer.

THE WITNESS: He asked if a firearm was a good equalizer and I told him a shotgun was, right.

Q (By Mr. Hilley) Now, on August the 5th, there was a lot of testimony that is somewhat vague here. You are talking about dynamite on August the 5th, right?

A Yes.

Q And then you are talking about shotguns or something. Okay. Now, you said that you arrested the Haines people?

A Yes.

Q How many people did you arrest from Haines Construction Company?

A I arrested for investigation and brought in, that I brought into the --

Q Yes, yes.

A May I look at my notes?

Q Oh, go ahead.

A I don't know in this one bunch, there was about nine, and then there was about -- in the truck that followed us, it was about five or something like that. I imagine around 15.

Q About 15 Haines employees?

A Right, that come down to the Sheriff's office.

Q Okay. Now, who threw the dynamite, a Haines employee or a union employee?

A Haines employee.

Q Who fired the guns, a Haines employee or a union employee or union member, I'm sorry. Who fired the gun?

A I don't know, I think the union -- No, I won't say that. I know that the Haines people fired one shot.

Q As a matter of fact, three union people were shot -- isn't this correct -- from a Haines employee?

A What was this?

Q Isn't it true that three union people were shot?

A Shot?

Q With a gun, right.

THE COURT: By "shot," you mean wounded?

MR. HILLEY: Yes, wounded.

A Not to my knowledge.

Q (By Mr. Hilley) Okay. Were you there?

A I certainly was.

Q Okay.

A I wasn't there when the altercation started, no, but I was there shortly after.

Q Look at your notes.

A Reason; apprehension.

Q Just a moment.

Now, I'll show you what has been marked as Defendant's Proposed -- Well, pardon me, I'll start with "A" first, okay.

A Yes.

Q Now, can you identify that document?

A Yes.

Q Okay. Now, can you identify who Calvin Rosewell, Sr. is?

A He is an employee of Haines Pipeline Company.

Q All right. Now, the complaint that was filed against him and served against him --

A Right.

Q -- for firing a gun -- I mean, for wounding somebody, right, aggravated assault?

A No, it doesn't say assault. Reasonable apprehension, bodily injury.

Q Okay. Doesn't it say two others, with a firearm?

A Right, if that is apprehension of bodily injury is, not bodily injury.

Q Okay. So you say no one was shot or wounded?

A I didn't see any. One guy received -- he was hurt by a rock from that blast of the dynamite. I told him to go to a doctor and give me a report, and he didn't do it, so --

Q I'll show you Proposed Exhibit B. Can you identify Charles R. Willard?

A Right.

Q All right. Now, he was apprehended, too, right?

A Right.

Q Is it a practice to just charge these people without having some sort of reason? He threw the dynamite, right?

A Right, Mr. Rauch from the Butte Police Department seen him.

Q Okay.

A Okay.

Q But I think you have testified that you didn't see anyone wounded with a firearm?

A Right.

Q Right. Isn't it true that Mr. Rosewell wasn't the only one that was charged with bodily injury with a firearm apprehension, there is several others, isn't that true?

A With a firearm?

Q Of the Haines employees.

A I took them all in, right.

Q Okay.

MR. ROBINSON: There is no objection.

THE COURT: Without objection, Exhibits A and B are received.

Q (By Mr. Hilley) In case I didn't ask you, Willard is a Haines employee, right?

A Right.

Q Okay. Now, at any time on August the 5th, did you see any of the pickets carrying pistols or guns?

A No.

Q At any time did you see the pickets carrying dynamite?

A No.

Q I assume the union people used plenty of obscene language, right?

A Right.

Q Okay. Especially after having dynamite thrown at them, right?

A Right.

Q Okay. Now, you testified that you arrested Mr. Mace because he told you he would be responsible for all the rest of them on this trespass; is that correct?

A Right.

Q Did you arrest anybody other than Mr. Mace who said he would take the blame, you know?

A No, I just got the names of all the rest of them and the license numbers of everybody at the scene.

Q So you just arrested him?

A Right.

Q But it was, however, necessary to arrest some 15 Haines Construction people, right?

A Right.

Q Okay.

A I had to do that to keep the peace.

Q I assume that you confiscated the pump and tap for the beer keg in order to keep the people from drinking, isn't that really true?

A That's true.

Q Okay. I think you testified that you saw Mr. Hillard on July 14th -- No, wait, I'm sorry, July -- August 1, right, and talked to Mr. Hillard for sure. In other words, you said he had Oklahoma plates, right?

A Yes, sir.

Q Incidentally, do the Haines also have Oklahoma plates?

A Not if I can catch them.

Q But you haven't seen or haven't seen any of the vehicles with Haines carrying Oklahoma plates, too?

A Oh, yes.

Q They carry Oklahoma plates?

A Right.

Q Okay. So both carry Oklahoma plates, right?

A Yes.

Q Mr. Hillard and Haines are both from Oklahoma?

A I believe so.

Q When you talked to, I think you said about three days ago, Mr. Mace and Mr. Hillard again, right?

A Right.

Q And you got into this argument as far as whether they were trespassing, right, again?

A It really wasn't an argument, I just told them. It was just a conversation.

Q Did you charge them, though, for trespassing?

A No.

Q Because they really didn't know if they were or not?

A I didn't either, it was a conversation that said --

Q All right. As far as Mr. Mace being charged for trespassing, do you know how much that bond is?

A $2,000, that is for both of them. Criminal mischief, another trespass, the total amount.

Q For sawing the post down, right?

A For that and the damage to the vehicles.

Q Okay. To what vehicles are you talking about?

A The Haines vehicle that I testified had the windows broken out of and the barrel of oil broken open and spilled on the ground.

Q Did that happen after the dynamite and the firearms?

A I would say before.

Q You said before, but were you there all of the time?

A No.

Q Okay. Because you didn't see the firearms being shot, either, right, even though there were charges?

A No.

Q Okay. Now, I'll show you what is marked Defendants' Proposed Exhibit C. Now, I assume that you recognize the person named on this proposed Exhibit, right?

A Right.

Q Okay. Now, this is what he's charged with, correct?

A Yes, I believe that has been amended.

Q Or do you know whether it has or not?

A Well, it's just -- It was private property he was on, but they weren't sure just which pasture he was in.

Q Changed to be sure of which pasture, right?

A Right. I believe the County Attorney told me he was going to.

MR. ROBINSON: We have no objection, Your Honor.

THE COURT: No objection, it will be received. Is that "C."

Q (By Mr. Hilley) As a matter of fact, Mr. Mace really isn't charged with anything else, is he?

A Pardon?

Q There is no other charges against Mr. Mace; isn't this correct?

A No, there is no other charges except the ones that were on that, right.

MR. HILLEY: May I have a moment, Your Honor.

No further questions, Your Honor.

THE COURT: Additional cross?

MR. DUFFY: I have some questions, Your Honor.

///

CROSS-EXAMINATION BY MR. DUFFY:

Q Mr. Haag, with respect to this equipment you testified to investigating on the 14th of July, can you tell me precisely where this equipment was located when you arrived on the scene?

A Now, you're referring to me? My name is Mr. Hauge.

Q I'm sorry, Mr. Hauge, where was it located, where was the equipment located?

A It was strung out about. One of them was on the road going -- just off the road going over Mullin Pass.

Q This would be past Avon, past Elliston, toward --

A Right opposite Blassford. One of them was right on the Dog Creek and the other one of them was up on the sidehill off Dog Creek.

Q How did you get access to where those vehicles were? You went up there, I presume, you went up the paved highway through Avon, Elliston. Where did you precisely turn off to go up there?

A Through a gate into Shatz' property. I think it was a locked gate, the fence had been cut alongside of it.

Q How many miles is it from Elliston up towards the Pass in that area?

A How far, probably 12 miles, probably ten or 12, somewheres in there.

Q Now, on Saturday July 23rd, you indicated that there were some 50 people blocking a road at a farmer's property and he couldn't get out; is that correct?

A Could you give me that date, again.

Q I think you said July 23rd.

A Yes.

Q Now, you arrived on the scene, did you not?

A Yes.

Q After you were called and you talked to these people?

A Right.

Q I think your testimony was that after you asked them to move, they did; is that correct?

A Right, they said they would not quarrel with law enforcement.

Q Okay. Now, the only three arrests or the only arrests made of anybody that you identified as a union person is Mr. Mace; is that correct?

A That is correct.

Q There haven't been any others?

A Correct.

Q There were no arrests prior to August 5th in Powell County; is that correct?

A No.

Q Or to your knowledge, anywhere else?

A Right.

Q Now, I ask again about the 24th, was there picketing on the 24th observed in your area? It would be a Sunday.

A There was the day after, yes, there was at Warm Springs.

Q How many pickets were there?

A I can't answer that because I was on a different side of the highway, I couldn't tell how many there were. The viaduct is there, and I was sitting on one side and the picketers were all over on the other side. I seen part of them, but I don't know who there was.

Q Were there any other law enforcement officers on the picket side of the road?

A All of Anaconda's men were there.

Q Okay. During that week, then, from the 24th on to the 1st of August, was there any pickets?

A No, the Pipeline Company was shut down.

Q Haines had not worked during that week, correct?

A Yes.

Q Have you confiscated any weapons other than those you spoke about today from Haines' employees?

A I haven't personally, no.

Q Do you have a property room at the Sheriff's Office in Deer Lodge?

A Yes.

Q Do you know there are, of your own knowledge, there are weapons that have been confiscated from Haines' employees in that property room?

A Right.

Q Have you seen those weapons?

A Seen the ones I confiscated, right.

Q Have you seen other weapons that are in that property room?

A Yes.

Q What kinds of weapons are they, are they handguns?

A Other than what I confiscated, there is a rifle there and -- Oh, some have been given back to the owners. Now, we had a shotgun or two there.

Q You did have a shotgun?

A Yes.

Q How many weapons would you say were confiscated from Haines' employees that you had in your property room?

A During the whole time?

Q Yes.

A You mean after the period?

Q Yes.

A Probably eight or ten, somewhere in there.

Q How many weapons have been -- firearms have been confiscated from any union employees?

A None.

Q What did you do with the beer kegs after you took the pump?

A I didn't touch the beer kegs except to take the pump off. They were left in the pickup.

Q I believe on Exhibit 3 -- or "C" rather, one that relates to Mr. Mace's arrest, who is Allen Johnson?

A He is a property owner, property owner up there in the Freeze Out area.

Q Did Allen Johnson make a complaint to your office about any trespassing in that locality?

A No.

Q So, this was -- this complaint was merely filed by the Sheriff's Office; is that correct?

A The County Attorney's Office.

Q Or the County Attorney. Mr. Johnson had not made a complaint to you?

A No, Mr. --

Q During the period of time from July 23rd until August, I believe you testified that there have been police officers and Sheriff's officers from surrounding counties as well as private people or whatever that have been deputized; is that correct?

A What do you mean by "private people"?

Q Well, let me restate the question. There have been, over the period of time that these incidents, as you call them, have happened, from the time the picketing began until at least last Friday, there have been your County Sheriffs on duty, correct?

A I still didn't get that one, could you --

Q You had Powell County Sheriffs on duty during the last --

A Oh, right, they're always on duty, 24 hours a day, seven days a week.

Q Now, when you make calls to other law enforcement agencies in other counties, do they respond?

A They try to, right.

Q Did they respond?

A Right.

Q Did they send people out to help you if you felt you needed it?

A Right.

Q Has there ever been a time they refused to send that help to you?

A No.

Q Has there ever been a time that any other State assault team, I think you said, has refused to respond to your request for assistance?

A Not when they could. I mean, there is times they're working and can't.

Q So basically when you have asked for help from law enforcement officers in surrounding counties because you felt you needed it, it has been delivered to you; is that correct?

A Right.

MR. DUFFY: No further questions.

THE COURT: Further --

MR. HJORT: Your Honor, I'd just like to make another comment for the record that as far as my three clients are concerned, we were served only yesterday. My clients were not present in Helena during the day, that I had no opportunity to consult with them, and I'm speaking specifically about Local Union 400. I simply have not had an opportunity to prepare for this hearing through that consultation, and thus am in no position to cross-examine this witness.

THE COURT: The record will so show.

MR. HJORT: Thank you.

THE COURT: Now, let's move along. Go ahead if you have a question or two, go ahead.

MR. PAT McKITTRICK: I just have a couple, Your Honor.

CROSS-EXAMINATION BY MR. PAT McKITTRICK:

Q Did Mr. Mace on August 5th, when he was arrested, go peacefully?

A Right.

Q And you had no problems taking the 15 Haines people in as well?

A No.

Q Okay. As I understand it, you are in immediate communication through radio and telephone with other law enforcement agencies throughout the state of Montana; is that right?

A Right.

Q Telex and things like that?

A That is correct.

Q Was the National Guard on standby?

A I believe they were, right.

Q Did you not need to use them; is that correct?

A No.

MR. PAT McKITTRICK: No further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION BY MR. ROBINSON:

Q Undersheriff Hauge, there has been some testimony about your arrest of Haines' employees, two employees, one involved with apparently shooting a weapon and the other involved in letting off dynamite. Did you actually arrest any of the other Haines' people and charge them with anything, or would you describe that in a different fashion as to what you -- how you handled them.

MR. PAT McKITTRICK: Objection, Your Honor, compound question.

THE COURT: This Sheriff can answer.

A An officer has the right to arrest for investigation any person, and he has the right to unarrest a person if he finds that there is no connection to what the deal was.

Q (By Mr. Robinson) Did you arrest and unarrest about seven other Haines' employees that you took into custody?

A Right.

Q Did you take them into custody for protective reasons or for true intent to arrest them for being engaged in some --

MR. DUFFY: Objection, a leading question.

THE COURT: Sustained, leading. I believe his prior testimony is that he arrested them to keep the peace, so that is his testimony.

Q (By Mr. Robinson) Do you have any evidence that any Haines' people, other than the two that you charged, which we'll leave aside -- So despite whether there was criminal action activitiy, but do you have any other evidence, any other Haines' people in that incident that did engage in any illegal activity to your knowledge, is there any evidence of any wrongdoing on their part?

A No.

Q All right. Did you take into investigative custody some union people regarding the shooting of a Caterpillar tractor on August 5th?

A Yes, the Department did.

Q All right. And what type of a weapon was used in that incident?

A I couldn't tell you that.

Q Well, was it a rock?

A A firearm.

Q A firearm. And what exactly happened, what was the incident?

A The guy was pulled off a Cat, and the Cat was shot, and the guy was roughed up.

Q And a firearm had been shot at a Caterpillar tractor?

A Right.

Q You took into investigative custody two people?

MR. DUFFY: Your Honor, I'd like to object. If this officer doesn't know and it's in the files --

THE COURT: Sustain your objection, sustained.

Q (By Mr. Robinson) Do you have under investigation at this time that shooting incident?

A Right.

Q All right. Now --

A That's two.

Q Did you ever confiscate any firearms from Haines' employees prior to July 23rd?

A No, I don't think so.

Q Do you have any evidence in your experience with this matter that any Haines' people ever initiated any confrontation?

MR. PAT McKITTRICK: Objection.

THE COURT: If you know.

Q (By Mr. Robinson) If you know of your own personal knowledge. Do you have any evidence that any Haines' people ever initiated any confrontations that created any --

A No.

Q -- things? Now, if you and your law enforcement agency in Powell County were faced with the situation as you were last Friday, given the same numbers of people, the same numbers of law enforcement people and the same miles of pipeline to cover, and knowing the geography as you know it, can you assure the Court that an incident similar to Freeze Out Hill could not reoccur now or will not reoccur?

MR. PAT McKITTRICK: Objection.

THE COURT: Yes. I'll overrule your objection. But that isn't criteria, but it's kind of leading, but I'll allow the Sheriff to answer. Go ahead.

MR. PAT McKITTRICK: The Undersheriff, also, Your Honor?

THE COURT: Well, everybody knows the undersheriff runs the Department, so he is the Sheriff as far as I'm concerned. Right, Sheriff? Go ahead.

Are we through then?

Sheriff, let me ask you, are you --

MR. ROBINSON: He hasn't answered the question.

Q (By Mr. Robinson) All right. Go ahead.

A Could I stop any incident?

Q Can you assure the Court this would not be repeated?

A No.

Q What is your answer?

A I don't think I could assure that it would not be repeated, no.

MR. ROBINSON: Thank you. That is all I have, Your Honor.

THE COURT: Thank you.

Now, it's my turn, see, I get my turn, too.

Sheriff, it's my understanding from what you have told Counsel, that besides the people you did call upon, other Sheriffs' Departments, and they did respond to you?

THE WITNESS: Right.

THE COURT: And did you have as much help as you needed to control this situation as you saw it?

THE WITNESS: I believe so, we just --

THE COURT: Had you needed more, it was available to you?

THE WITNESS: I don't think so.

THE COURT: Is it true, somebody asked you the question, was the National Guard on standby?

THE WITNESS: I'm sorry, it was on standby, but it was never used.

THE COURT: How did you know that?

THE WITNESS: Governor Schwinden told me.

THE COURT: He told you that personally?

THE WITNESS: Right.

THE COURT: What did he tell you?

THE WITNESS: He come --

THE COURT: Well, did he tell you that if you needed some help, that the Guard would be there?

THE WITNESS: He said if it got plumb out of hand, the Guard would be there. He said that, right, but he did --

THE COURT: In answer to Counsel's question, if this occurred, first of all, the question is: Do you think that you did control the incident that you had?

THE WITNESS: After we got there, right. It was a little bit late, you know, to control the whole deal.

THE COURT: Well, that's true in most criminal behavior.

THE WITNESS: Yes, you can't be everywhere.

THE COURT: Well, I mean that seems silly, but that is a part of what we're talking about here, also?

THE WITNESS: Right.

THE COURT: All right. But as far as you are concerned, you were capable of handling and did handle it?

THE WITNESS: Right.

THE COURT: And it's not your opinion that you did not handle it?

THE WITNESS: I believe we could, right, with the men we had, I think we could limit it.

THE COURT: Did Counsel hear that last -- All right.

Do any counsel have additional questions?

MR. HILLEY: No, Your Honor.

MR. PAT McKITTRICK: No, Your Honor.

THE COURT: May the witness be excused?

MR. ROBINSON: Yes, Your Honor.

THE COURT: You are excused. We appreciate your testimony. You are free to go or you are welcome to stay. We will recess for about five minutes.

///

(WHEREUPON, a brief recess was taken.)

THE COURT: The Court is in session. You may call your next witness, please.

MR. ROBINSON: Thank you, Your Honor. We call Mr. Mel Rauch, R-a-u-h -- R-a-u-c-h, I'm sorry.

MEL RAUCH, being first duly sworn, testified as follows:

THE WITNESS: My name is Earl Mel Rauch, last name R-a-u-c-h.

DIRECT EXAMINATION BY MR. ROBINSON:

Q What is your profession or occupation?

A I'm a police officer for Butte, Silver Bow Sheriff's Office.

Q Are you a resident of Silver Bow County?

A Yes, I am.

Q How long have you been in the Silver Bow County Sheriff's Office?

A Approximately eight years.

Q What is your rank at the present time?

A First Class Patrolman.

Q Have you always or are you now presently a member of the International Engineers or Operating Engineers and Local 100?

A No.

Q Have you ever been?

A I have a withdrawal card from about 1972, somewhere around that area.

Q All right. Prior to August 5th of 1983, were you acquainted with one James Mace?

A I was.

Q On August 5th of 1983, were you called to the Deer Lodge, Montana area in connection with the Haines Pipeline Construction Company activity there?

A My shift commander, as I reported to work that morning, informed me that I would be assigned to a unit that was going to work with Powell County Sheriff's Office.

Q How many deputies were in that unit?

A Seven.

Q Did you proceed to Powell County?

A Yes, we were advised to fuel our vehicles, to take care of any assignments we wanted to take care of prior to heading over there, and to make haste.

MR. HILLEY: Your Honor, could we have a

date here.

MR. ROBINSON: August 5th, 1983.

Q (By Mr. Robinson) That is the date you are talking about?

A I am talking about August 5th.

Q Did you proceed to Deer Lodge, Montana?

A Yes, we did. There were three vehicles from our Department that went over there.

Q Who was your partner?

A My partner was Officer Bill Serves (phonetic). We were in Car No. 8.

Q And did you go directly to Deer Lodge, Montana?

A We fueled our vehicles after a briefing, and went directly to Deer Lodge, Montana. And as we arrived there, we were told to be in the vicinity of the Four B's on the north end of Deer Lodge.

Q Do you know why you were told to go to that location?

A They said that the individuals that we were to help supervise were on a bus and in several vehicles located at the Four B's parking lot.

Q When you arrived there, did you find such a situation?

A When we arrived there, there were several officers already there. We pulled into Convenient Mart, it is a service station and grocery store, and wherever else, just east of the Four B's Cafe. And we pulled in, and you know, congregated with the law enforcement officers.

Q Did you see a bus there at the time?

A Yes, I seen a large bus, highway-type bus.

Q Did they have any designation or label on it?

A I believe the Company emblem on that bus was Union Express.

Q Did you notice the county in which the vehicle was licensed?

A No, I did not. The vehicle was perpendicular to my position, so --

Q Did you see people with picket signs and/or with any other objects or devices to appear to you to be associated with the unions that were involved with the picketing?

A I didn't notice any picket signs.

Q Did you notice the condition of -- any unusual condition of any of the people milling around the bus area?

A One individual, I don't know his name or anything, appeared to be quite intoxicated. He was middle 40's, probably six feet, 185 pounds. Had a yellow shirt on, glasses. I don't know what his name is or was, but that is the only particular individual that seemed to be, you know --

Q Was he being quite verbal and expressive?

A Yes, he was.

Q What did you do after you observed these vehicles and this bus or that bus vehicle, did you observe any other vehicle that appeared to be with the bus or associated with the bus?

A Well, the group of people there seemed to just be milling around the area. And when the -- And so the officers milled around in this area, and when the bus pulled out, some of the vehicles pulled out behind the bus and some of the vehicles stayed in the parking lot, which were some of the people milling around with the people on the bus. And they went to their vehicles and started in a different direction, but they were in kind of a convoy-type situation.

Q Did you follow either the bus or any of the vehicles?

A Well, we stayed back, Officer Serves and myself, and other officers' vehicles that stayed back, because we didn't feel that all the people that were involved in that situation had loaded up on the bus or had gotten in the vehicles that followed the bus. And several officers had already followed the bus, so we decided to stay back to see what took place after that.

Q What did you next do, then?

A Well, there was approximately 12 to 15 vehicles that left, and, oh, two minutes, three minutes after the bus had got onto the highway, and they went underneath a viaduct as though they were going to the highway, but instead they continued on to the frontage road which was later identified to me as the Sam Beck Road.

Q Did you follow that caravan of vehicles?

A Yes, we notified Vehicle 282, which was the Undersheriff, we were going to follow these vehicles, and we -- First, I informed my Sheriff and my supervisor, and he advised me to inform the Powell County Undersheriff, and I did so.

Q Then you followed this caravan of vehicles?

A Yes, we did.

Q Tell the Court what transpired from that point.

A From that point, we traveled in a northeasterly direction, and there was a convoy of probably 12 to 15 vehicles. And the interval between vehicles varied sometimes, in the front of the convoy, was 25 meters to say 50 meters, and it got as far as probably 100, 150 meters toward the back end of the convoy where we were. We followed them up the road approximately seven miles. There was a residence there, and one of the vehicles pulled off at a driveway to the residence, and we slowed down just to observe what was going on. The interval started to close up at that time, and by the time we passed the residence, most of the vehicles were bumper to bumper and stopped at a gate just across the spring from that residence.

Q Did you see any activity then transpire at the gate?

A At that particular area, a lot of the people dismounted their vehicles and proceeded to the front of the convoy where the gate was, around a Chevy truck, a late model Chevy truck.

Q From outward appearances, did the gate appear to be a closed access gate to private property?

A The gate was closed. It was a green metal gate, it was very stout gate, a very good gate as far as farm gates go, and it was closed. To say whether it was locked or not from my distance, I could not say it was locked. The people congregated to the left-hand side and were facing the gate, the left-hand side of that gate.

Q What activity did you see take place?

A Well, at first, we didn't know what was going on, we thought maybe they were going to picket there or whatever they were going to do, so we kept our distance. We were probably 300 yards to the rear of that. And people started milling around, and then, an individual left that particular area, the group of people, and went back to a Chevy Van and opened the side door on the van and took an object out of there and proceeded back to the group. At that time we did observe some smoke, it looked like two-cycle oil exhaust smoke that you might get from a chainsaw, and we rolled down our windows to see if we could hear that. We didn't hear any chainsaw noise.

Shortly after that, the individual returned to the van, and the convoy started to move through the gate. The gate was opened, so the convoy started to move through the gate. We were advised by some people walking by from the convoy bus, that came up after we had stopped behind us on the road, they had walked forward and were returning back, and said watch out, there is supposed to be tacks on the road. So we pulled off to the side, right-hand side of the road, and proceeded through the gate. When we reached the gate, we observed that the gate was bordered on either side, the hinge side was a railroad tie approximately eight to ten inches square, probably about six foot tall, and on the lock side was the same type of post. The lock side post had been cut, and the wire attached to the post had been cut. There was a chain going from the gate around the post that had five to ten locks on it. It was a new-type chain and had several new locks on the gate. The gate and the chain -- The gate with the locks on it was still attached to the gate, but the gatepost had been separated and was off to the other side.

Q Based upon your observations, did you come to a conclusion as to how the gate had been opened?

A I know that the post that the gate was, the locks were attached to, was sawed and it appeared to have been sawed by a chainsaw. I don't know that for a fact, but it appeared that it had been sawed by a chainsaw.

Q All right. Then what did you do next, where did this group of vehicles go then?

A They continued then up the road. It was a single road. And we at that time informed Powell County 282, that the gatepost appeared to have been cut off and that these people had continued on through. We again, then, got back into the convoy behind the convoy and followed them up the road.

Q Now, did you notice the lead vehicle?

A The lead vehicle was a late model 5 dash plate, driven by Mr. James Mace.

Q Did you know that at the time or did you ascertain that later? Did you recognize Mr. Mace when he got out of the lead truck?

A Yes, and I also recognized Mr. Mace when he left the Four B's Cafe, he was the first vehicle in the convoy at that time, also.

Q So you were aware that Mr. Mace was leading this caravan?

MR. DUFFY: Object to that, Your Honor, that is a conclusion.

THE COURT: Overruled, you may answer.

A I can't determine whether he was leading them or they were following him. He was the front vehicle.

Q (By Mr. Robinson) All right. My point was, you did know it was Mr. Mace?

A Yes, I did.

Q Tell the Court, then, what you next observed and tell the Court what you saw from the remainder of the incident.

A Well, the convoy got spread out there after they went through the gate. We stopped to make -- to write down certain incidentals for our report. We wrote down the time, our mileage on our vehicle, and another vehicle, the license number of that vehicle that we figured did the sawing, where it came out of.

We then followed the convoy up the hill, up a ridge in it, through, up, I guess, a rough terrain-type situation. We come to another gate approximately two miles past the first gate. This gate did not have -- It was a gateway, and it did not have a gate on it. There was one vehicle pulled off to the right-hand side of the gate, and the vehicles were passing through, the vehicles from the convoy were passing through the gateway. And the vehicle in front of us went through, and it was a Butte license plate, and it decided to turn around, and it appeared he was going to come back out the gateway. We did not want to block his ability to leave the scene, so we afforded him the opportunity to complete his turn to come back out. Instead of coming out, he obstructed the gateway and stopped his vehicle and shut it off.

Q Did he obstruct your car from then going through?

A Yes, he did.

Q Did you ascertain the identify of that individual?

A Yes, that was driven in by a Larry Hawe, and his vehicle license number was already given in Court. That was the vehicle that he was driving, it was registered to him.

Q Did you know him from Butte, Montana?

A I knew his face, I've not had any personal experiences with Mr. Hawe. I knew that he was a Butte resident, and I had seen him around there.

Q Did you have conversation with him, then, about his blocking that gate?

A Yes, Officer Serves and I agreed to leave him room to continue pulling out there. And I went and got out of my vehicle, went up to Mr. Hawe, and informed him he was blocking the gateway and that we wanted to get through the gateway and that he was invited to move his vehicle. He stated to me that how about giving us a summons was his exact words, and I said I want you to move the vehicle and if you do not move the vehicle, I'll consider that you are obstructing law enforcement officers from doing their duty, we will personally remove you from the vehicle and move it myself. He then said okay, and he slowly started up his vehicle, slowly moved it backwards so that our patrol car could get through.

Q Now, when you were at that point, did you have any awareness or idea, based on your observation, as to where this other group was heading, what their destination was or their purpose was?

A As you face the gateway, they were off to my right in that pasture, probably about 100 to 300 yards, and there is a powerline that runs through that property. The vehicles were congregated on one of the posts or frames that supports that powerline, and there was one or two persons climbing that supporting device.

Q Did you see a pipeline crew or employees of Haines anywhere in your eyesight observation?

A At that particular point, at the gate, you cannot see the piepline Right-Of-Way itself. We pulled up into that area, and we were going to pull down to see what was going to happen. The people started to dismount their vehicles, and as we approached over the ridge a little bit, we could see that the pipeline was there probably 400, 500 yards down. It would be four or 500 yards east of where the group had dismounted their vehicles.

Q Now, this area was -- How would you describe it in terms of ownership or from its outward appearances, did it appear to be BLM or privately owned, and what type of purpose, as agricultural or what was it? Just describe the geography there.

A It appeared to be privately owned, it didn't look like BLM fence. Most of BLM fences are better constructed than that and better maintained. If it was a BLM fence, there would have been a gate on there, and there was no gate. There was no signs of ownership, you know, no trespassing signs or anything like that.

Q All right.

A So I could not, you know, determine who had ownership just from --

Q You indicated something about a pasture, that they were in a pasture.

A It appeared to be a pasture, yes.

Q Okay. Now, tell the Court what you next did regarding this.

A Well, the individuals that were congregated around this power pole were -- had dismounted their vehicles, as I stated, and started to follow a fence line down towards the pipeline Right-Of-Way. And we decided rather than get actively engaged at that particular time, we were parallel with them, and we followed them down to the pipeline. At that time we also radioed for help and told 282 that this could generate into something more serious and that we requested back-up immediately.

Q All right. What happened then?

A Well, we parallelled the fence, and the group of people that were between us and the fence, they were on the fence, right against the fence, and we were probably 100 yards to the north of the fenceline. They weren't marching in an orderly-like file fashion, they were scattered about. Several of them had clubs and one individual had a pipe that was approximately three to four feet long. They had approached the pipeline crew. There was two areas that the pipeline crew was working on at that time on the Right-Of-Way. There was a drilling rig that was on the northernmost of the working area that the pipeline crew was working at. It was right on the fenceline. The group of individuals followed down the fenceline and started to throw rocks and shout obscenities and different things.

Q How many people would you estimate were in this group?

A I would estimate between 30 and 40 people.

Q How many Haines' employees did you estimate to be in that area at that time?

A Five to seven at that particular drilling rig.

Q And who was throwing the rocks?

A The group of individuals that were walking down the hill, the ones we had followed up from the Four B's that day.

Q In which direction were the rocks being thrown?

A They were being thrown in the direction of the working crew and the drilling rig.

Q Did you see the crews throwing anything or initiating any confrontation?

A At this particular time, I did not.

Q All right. Did you see any members of the crew struck by the rocks?

A One individual was knocked -- was hit, and he fell down on one knee. He got back up again and continued to run towards the other group.

Q All right. Did you later see any other people in the Haines group struck by rocks?

A There was a woman that was hit later by a rock.

Q All right. So then what happened?

A After the Haines crew retreated down to the backhoe area that was approximately 300 yards further south on the pipeline, the first -- The group that we were following kind of congregated around the drilling rig itself. And Officer Serves and I at that point had started to walk. We had dismounted and radioed and gave that information to 282 that rocks had been thrown, you know, and that equipment was being damaged and that we were going to get out of our vehicle to move into the area.

Q Okay. At that point you just indicated equipment was being damaged. Did you observe equipment being damaged?

A The window on the drilling rig was broken at that time.

Q All right.

A After we dismounted our vehicle and started to approach the area where the drilling rig was, one of the individuals had taken a club and had broken another window. And I heard some damage to the right of me where a truck was parked, that glass was being broken, but I could not see that particular area and I don't know who was in there. I just could tell you it sounded like glass was falling.

Q Okay. At that point, were you and Officer Serves, in your opinion, of the ability to sieze and halt any further illegal activity or violent activity?

A Officer Serves and myself approached the area. We were quite concerned, because we didn't want to get engaged, because we could not handle the situation we didn't feel.

Q Then what happened?

A Well, that group congregated around the drilling rig, and Officer Serves and I mingled into the group, the edge of the group, and conversed with some of the individuals in that group that we knew and told them they were putting us on the spot, you know, that we wanted them to control their actions and to, you know, just get back and to not be throwing rocks and using violence.

Q Okay. And where was this approximately relative to the equipment?

A We were right at the drilling rig itself. There is a gate in that fenceline that that group of people followed down, and right at the Right-Of-Way, the drilling rig was right at the fenceline itself.

Q As a result of that conversation with that group of people, did it resist the forward progress to the Haines people?

A At that particular point, it was quite calm and almost kind of a relaxing thing going, that is, it wasn't a problem, and we got a chance to mill around a little bit. And then some of the individuals started moving southward on the pipeline, the Right-Of-Way, down towards the backhoe where the crew had taken refuge.

Q And then did the rest of the group start towards the Haines people?

A No, the largest portion of the group headed towards the Haines people, some of the people in the group stood in the area of the drilling rig and started to mingle around the equipment in the drilling rig area.

Q How many people advanced to the Haines people who had taken refuge?

A Probably 20 or 30 people.

Q Then what did you see and hear?

A Officer Serves and I talked about the situation. And at the drilling rig, the drilling crew had placed powder into the ground to blast around. There was cord laying on the road, some detonator cord, to be blasted in the ground. We decided that rather than -- we should safeguard that particular area so that didn't set off. I decided -- we decided Officer Serves would take the area cord so it wouldn't set off and watch the equipment in that area. I then moved down with the group of people that were moving down towards the backhoe area. And on my way down, I was probably to the left flank of the individuals, the group that was moving down, and I looked back to see how Serves was doing and I heard a shot fired.

Q Did you see the group throwing rocks again at that point?

A Yes, I did.

Q Did you see somebody struck that was down by the backhoe?

A That was the time the woman was struck with the rock, I believe.

Q Then you heard a shot fired?

A Well, I heard the shot fired as I was going down, yes.

Q Did the group cease proceeding towards the Haines group?

A I wasn't at the front of the group, so I don't know if the front of the group stopped at that particular time. There was still verbage being exchanged and rocks being thrown, you know. I at that time took off at a run, you know, quick on my pace, to get to the front of the group. And you know, as I turned around, I seen that the Haines Pipeline had an individual that was putting his pistol back in his holster and he was standing there with a rifle, and there was other people lighting what appeared to be a stick of dynamite, so I ran towards the front of the group. That individual threw that stick of dynamite out between the Haines group and the other group.

Q In the middle between the two groups?

A It wasn't exactly in the middle, it was more on the -- away, more away from the Haines people than it was toward the Haines people. And it was probably more to the right-hand side of the group as they faced the Haines people.

Q Did the individual -- did you see him before he threw the dynamite when he did, did he demonstrate it or display it before he threw it?

A I heard somebody from the Haines -- in that area, I couldn't put a voice to a face, but I heard the verbage they were going to throw dynamite if they proceeded, you know, the group proceeded to come closer.

Q All right. And the dynamite was thrown?

A Yes, it was.

Q All right. And were you in the immediate vicinity when it went off?

A Yes, I was.

Q And did -- was anybody injured as a result of that blast?

A It was not brought to my attention that anybody was injured. You know, I hit the dirt like everybody else, it took people awhile to realize that was what really happened. You heard it's lit, it's laying out there, it's smoking, you know, and then all of a sudden you hear it boom. And people had crouched down being prepared for the blast to go off. The back of the crowd hadn't crouched down, you know, it took -- The dynamite went off before the crowd really got a chance to realize that it was really happening.

Q All right. At that time, in that group, did you see Jim Mace?

A Yes, he was up towards the front portion of the group.

Q Did you participate in the arrest of Mr. Mace and had some conversations with him?

A I did not participate in the arrest of Mr. Mace, no, but I did have some conversation with him. Right after the dynamite went off, I stepped to the front of the crowd to tell them if they would just stop right there, not throw any more rocks, you know, and not move forward, I would go down and, you know, see that the weapons were put away and no more dynamite was thrown. So I was assured by several members of the group they would not go any further, they would stay at that point and give me an opportunity to talk to the people from Haines.

Q Did Mr. Mace, was he one of the individuals that made that assurance?

A Yes, he was.

Q Do you know how the equipment was damaged, did the damage that you saw, by what means was the glass broken and --

A Okay. I only seen there was more, okay. I can only testify that a window was broken on a vehicle from the Haines Pipeline, a white Chevy truck, by rocks. I seen the window shatter as the rocks were hitting it. I seen the window on the drilling rig shatter from rocks that were coming from the direction of the crowd, and then a club that hit the window.

Q You appeared in response to a subpoena duces tecum; is that correct?

A That is correct.

Q And in that subpoena you were asked to bring with you any reports that you had prepared in connection with this incident.

A Yes, I was.

Q Did you file a written report and statement with the Powell County Sheriff's Office?

A Yes, I did.

Q You left that with them in their investigative file?

A Yes, I did.

Q But you did bring that report with you?

A I have a copy of it right here.

Q I'm going to hand you what has been marked as

Plaintiff's Exhibit No. 3, Officer, and ask you if you can identify that document.

A Yeah, I can. It's a report written by me on Powell County's report form, consisting of four pages, that was written about the incident at Freeze Out point.

MR. ROBINSON: Thank you. I offer Plaintiff's Exhibit 3, Your Honor.

THE COURT: Is there objection?

MR. DUFFY: No objection.

MR. HILLEY: I'm seeing it, I am passing it down the line for Counsel to take a look.

MR. HJORT: No objection, Your Honor.

MR. HILLEY: No objection, Your Honor.

THE COURT: Without objection, the Exhibit is received.

Q (By Mr. Robinson) Officer, when you were in Deer Lodge observing the bus and these vehicles, did -- would you give us an estimate of the number of law enforcement people you saw there at that time?

A I would say approximately 30. I didn't sit there and count them.

Q Why was not the group of 30 law enforcement officers able to assist you in preventing this occurrance that you witnessed before it did occur?

MR. DUFFY: Objection to that, Your Honor.

THE COURT: If you know.

THE WITNESS: Do you want my personal opinion or --

THE COURT: You are a police officer, right?

THE WITNESS: Yes.

THE COURT: All right.

A In my opinion, I don't think we had a chance to organize, to really see what was hitting us. When the busses left, most of the people took off following the bus, and there didn't seem to be a central control point.

Q (By Mr. Robinson) Is the area large, it is a large area, some of the individuals were going up to Elliston and assumed that was where the bus was going. So that was how many miles from Deer Lodge, approximately?

A Forty miles, I would take a guestimate, I don't know for sure.

Q You had 30 law enforcement officers to cover a group of how many people, would you estimate, were with the bus and the caravan total?

A I would estimate 150, just -- or guess.

MR. ROBINSON: Thank you. You may examine.

CROSS-EXAMINATION BY MR. DUFFY:

Q August 5th was the first date you were involved?

A First and only day.

Q When you were milling around out there, I think you said outside the Four B's, did you feel the situation was pretty well in hand, any problems with it?

A Well, I was milling around outside, it wasn't the Four B's, I was across in the Convenient Mart. I did not know what the situation was, so I couldn't tell you if it was in hand or not.

Q There were 30, 40 officers there?

A No, not at that particular area, 30 officers I said, approximately, in the area. Now, I don't mean they were right there at that particular point.

Q Were there any incidents that occurred at that time, at that point?

A Foul language, verbage exchanged, no action of violence, no.

Q Now, you told me that some of the officers followed the bus and you followed this group; is that correct?

A That is correct.

Q To your knowledge, then, both of these groups had law enforcement officers accompany them; is that correct?

A That is correct, to my knowledge.

Q Is it standard police procedure for you, if you need additional assistance, to call for that assistance?

A Yes, that is correct.

Q And it basically comes down to a judgment call, doesn't it, about when you decide to call for help, you make that decision?

A The officer at the scene would probably make that decision unless there is a policy written by the Department which would tell him.

Q Okay. When you were out there some 300 yards from the pickets, when this fence incident happened, did you feel compelled at that point to call for assistance?

A We did call for assistance.

Q You did at that time?

A Yes.

Q Okay. Could you have called for assistance earlier than that?

A If I wanted to, I could.

Q So it's a judgement call, basically, when you decide to call for assistance?

A That is correct.

Q Okay. Now, when you called for assistance, when you asked for back-ups, did they arrive?

A It took some period of time. We were concerned about whether they were going to arrive in time.

Q I didn't ask you when they arrived or whether you were concerned, I asked you did they arrive?

A They did arrive.

Q Okay, now, when you walked down over the hill and saw the Haines people, you said there were about 30 or 40 of the group that had walked onto the property?

A They drove onto the property, they walked from their vehicles.

Q Getting back to that fence, were there any signs on that fence?

A No, I stated that earlier, there were no signs on the fence.

Q You said there were multiple locks on the fence?

A Okay. Now, we're talking about two different fences.

Q On the outside gate, the first one?

A On the first gate, I did not see any signs on it, no. There were multiple locks on the gate, that is correct.

Q And I think your testimony was you don't know whether it was private land or public land?

A No, this was on the second gate that I said we didn't know whether it was private land or public land.

Q Do you know whether the outside -- the outside gate was on private or public land?

A No, I did not.

Q Now, you say that there were about 30 or 40 of the group that walked on over the ridge, as I think you said, toward the pipeline; is that correct?

A That is correct.

Q And how close were you to them as they were walking?

A Seventy-five, 100 yards.

Q Were you on foot?

A No, I was in my vehicle.

Q Still in radio contact with wherever the headquarters was?

A That is correct.

Q Now, when did you -- You had two officers, you stopped and dropped one of them off; is that correct?

A No, there was just myself and Officer Serves.

Q You dropped Officer Serves off?

A No, I did not.

Q You both got out of the vehicle at the drilling rig?

A Yes, that is correct.

Q Okay. And Officer Serves elected or you advised him to stay there; is that correct?

A We mutually agreed that one of us would have to stay there.

Q Okay. Fine. So you went on with the group; is that correct?

A That is correct.

Q Now, how far are you from the group at this time?

A At which particular point?

Q As you leave Officer Serves behind at the drilling rig and go over the walk.

A I was with the end.

Q You were right with them?

A Yes.

Q And I understand your testimony is that you were talking to them at some point, and you said, in your words I think, that the situation was pretty calm?

A All right. The particular instance you are talking about was after the initial confrontation had been completed and the Haines Pipeline people had moved down to another area where the backhoe was, which was approximately 300 yards. This initial group seemed to be calm, the people I came in contact with.

Q Would you say your presence had a calming effect on them?

A No.

Q All right. You said that there was some dynamite charges that had been set for blasting; is that correct?

A That is correct.

Q Where were they in relationship to your position or the group's position?

A The group walked right by them and they were adjacent to the drilling rig. They had been on the northwest side of the drilling rig, and there right on where the pipeline was being dug.

Q How far were they from the group?

A They walked right over them.

Q They walked over them for what distance?

A That is where the drilling rig was, and they milled to right on top of them.

Q So they were right on top of them?

A That is correct.

Q You heard this shot fired?

A That is correct.

Q What period of time between the time the shot was fired and you heard the explosion?

A Couple minutes.

Q A couple of minutes, 120 seconds?

A Approximately.

Q Now, you saw the individual light the dynamite and throw it?

A I did.

Q Did he throw it with purpose, did he seem like he was throwing it towards someone or at someone?

A I believe he could have thrown it further than he did. He was throwing it in the direction of the crowd, and I believe his intent was that he throw it between the crowd and the Haines people.

Q Do you know anything about dynamite, Officer?

A Yes, I do.

Q How close did the dynamite go off to the crowd?

A I would guess, making an estimation, of 30 to 40 feet from the front person in the crowd.

Q Did it go off then 30 to 40 feet, also, from where the charge had been placed in the crowd?

A No.

Q How far from the charges?

A 200 yards, that is an estimate.

MR. DUFFY: I don't have any further questions.

THE COURT: Redirect or, I'm sorry, anybody else?

MR. HILLEY: No cross, Your Honor.

MR. PAT McKITTRICK: No cross, Your Honor.

MR. HJORT: I have no cross, Your Honor.

THE COURT: Very well. Redirect.

REDIRECT EXAMINATION BY MR. ROBINSON:

Q How much time elapsed from the point in time when you first called for assistance until assistance finally arrived at the immediate area?

A Eight to ten minutes. When the assistance arrived, the basic disturbance was ended, the dynamite had been thrown and the guns had been put away.

Q It was all over by the time help arrived, in other words?

A Well, to that point, I was convinced that the large group of people were not going to make an advance and the Haines people had put away their weapons, so I was convinced that the biggest hazard had been temporarily delayed or delayed, terminated. There was still potential threat there.

Q Now, did you assist local law enforcement personnel to ascertain identities of the individuals that were on the pipeline Right-Of-Way and vehicle license numbers and that sort of thing?

A I took the names and license numbers of the vehicles that were in the Haines crew. I was in that area working in that area, and the other officers were taking care of the other group of people.

Q So is that your testimony of ascertaining the identity of all the individuals in this entire area?

A That is correct.

MR. ROBINSON: That's all I have. May this witness be excused?

THE COURT: Any objection?

MR. HILLEY: No objection, Your Honor.

THE COURT: Thank you very much for your testimony. You are free to go, you are welcome to stay.

MR. ROBINSON: Call Donald Roberts.

DONALD ROBERTS, being first duly sworn, testified as follows:

THE WITNESS: My name is Donald Roberts, R-o-b-e-r-t-s.

DIRECT EXAMINATION BY MR. ROBINSON:

Q Would you state your address, sir.

A 610 Texas, Deer Lodge.

Q How long have you lived in Deer Lodge?

A Twenty-five years.
Q How old are you now?
A Twenty-nine.
Q By whom are you presently employed?
A Haines Pipeline.
Q When did you go to work for Haines Pipeline?
A July 11th.
Q What position do you hold?
A Ascurt (phonetic).
Q Directing your attention to July 23rd of this year, would you tell the Court if any unusual incidents occurred. What day of the week was that, do you recall?
A Well, it was Saturday morning I believe.
Q All right. And was anything called to your attention, anything unusual that was occurring at the pipeline project?
A Yes, I received a call that there was a bunch of people coming down, we might have some trouble.
Q Where were you at that time?
A I was stationed out on Burnhallow Road (phonetic).
Q Burnhallow Road?
A Yes, about two, three miles east of Deer Lodge.
Q Did you ascertain the general direction in which trouble was brewing?

A In the Deer Lodge area.

Q All right. So what did you do, then?

A I went out and got on my equipment, guarding the equipment. While I was there at the equipment, a ranch hand drove by and told me he was just coming from town, and there was a bunch of trouble in town. He said it looks like there is going to be a little bit of trouble here, and he pointed to the south of me on the hill where there were several vehicles with individuals in back of them. These vehicles proceeded down the Right-Of-Way of the pipeline coming north towards us. This other individual and myself, we got into my vehicle, went to the south end of the equipment and met these other individuals coming down off the hill.

Q Did you see any weapons?

A Yes, I did. It appeared to be an older model 30-30.

Q Any other weapons?

A Maybe another rifle in the back of the pickup.

Q All right. Did you engage this group of people in conversation?

A Yes, I did. I exited my vehicle, I started walking towards them, I advised them that this was private property so they were trespassing.

Q What was the response?

A They said this is Montana Power, come on. I then advised them this ranch hand was the landowner, and he started to talk to them. And they said they didn't want to mess anybody's land up from Montana or anything. They talked for a few minutes longer, then, they turned around and went back up the hill.

Q Did they indicate their purpose of being on the pipeline Right-Of-Way?

A I imagine for destruction of it.

MR. PAT McKITTRICK: Objection, motion to strike.

THE COURT: Just so the record is clear, his response will be stricken. Go ahead.

Q (By Mr. Robinson) Did they state their purpose, tell you why they were there or indicate any kind of purpose for being there?

A No.

Q Then what happened next?

A Myself and the ranch hand, we went back -- went up to a neighbor's house and used the phone. I called the pipeline, Mr. Haines told me to get out of there. I then left the ranch house, went down, retrieved my equipment from the Caterpillars and that. And as I was leaving, I got down the County road approximately, maybe a mile or so, come around the blind corner and there were three vehicles parked staggered alongside the road and individuals standing in the road and alongside the road.

Q Were these vehicles, did you identify those vehicles or had you seen them previously?

A Yes, the one vehicle I had seen previously before, it was the one that come down the hill.

Q The one with the guns in it?

A Yes, the one with the rifle in the back.

Q All right. What happened then?

A They were standing in the roadway, I pulled up to them, I started to exit my vehicle, and I got a sharp kick in the testicles and was rendered helpless. I went to my knees, received a couple more blows to the ribs. And as I was laying on the ground there, I was advised to move back to Oklahoma.

Q Are you from Oklahoma?

A No, sir.

Q And what else?

A They milled around for a little bit while I was laying on the ground there, they got back in their vehicles and left. I laid there on the ground a little while longer and then I left.

Q Were you in pain?

A Yes, I was.

Q Were you off work?

A Yes, sir.

Q Were you treated by a physician?

A Yes, sir.

Q Are you still being treated by a physician?

A Not at the present time I am not.

Q Did you receive internal injuries?

A Yes, I had what they call a hematoma of the testicle, which is blood around the testicle in the sac.

Q Were you struck -- How were you struck, by objects or by --

A Foot.

Q You were kicked?

A Yes, sir.

MR. ROBINSON: You may examine.

CROSS-EXAMINATION BY MR. HILLEY:

Q Mr. Roberts --

A Yes.

Q -- have you been able to identify any of the people that did this?

A No.

Q Now, you said that you saw rifles --
A Yes.
Q -- earlier?
A Yes.
Q Were they carrying rifles?
A When they were coming down the hill, they were in the back of the pickup, I could see a rifle sticking up.
Q You didn't answer my question. Were they carrying rifles?
A Yes, they were in their hand.
Q Okay. How many people were carrying rifles?
A Approximately two, I saw two rifles.
Q Okay. But you don't know who these people were, whatsoever?
A No, sir.

MR. HILLEY: No further questions.
THE COURT: Additional cross.
MR. PAT McKITTRICK: No questions, Your Honor.
MR. DUFFY: No questions, Your Honor.
THE COURT: Redirect?
MR. ROBINSON: He may be excused. May this witness be excused?

THE COURT: Any objection?

MR. DUFFY: No objection.

THE COURT: Thank you for your testimony. You are free to go, you are welcome to stay.

Your next witness, please.

MR. ROBINSON: Dan Meary.

DAN MEARY, being first duly sworn, testified as follows:

THE WITNESS: Daniel Meary, M-e-a-r-y.

DIRECT EXAMINATION BY MR. ROBINSON:

Q Mr. Meary, will you state your home address.

A 2607 Harvard, Butte, Montana.

Q How long have you lived in Butte, Montana?

A All my life.

Q By whom are you presently employed?

A Haines Pipeline.

Q How long have you been employed by Haines Pipeline?

A Since July 3rd, 1983.

Q What position do you hold with that Company?

A I'm a laborer on the backhoes.

Q Directing your attention to Saturday, July 23rd, 1983, did anything unusual happen to you on your way to work?

A Yes, it did. Approximately 6:30 in the morning, we turned into Warm Springs, and seen a large mob of people blocking the road. We were in a 1971 Ford Comet.

Q Who owned that vehicle?

A It was owned by my older brother. He lent it to me for the purpose of going to work.

Q Was your brother also employed by the Haines Pipeline Company?

A Not the one that owned the car, but another brother was employed by them and he was with me in the car along with another friend. There were three of us in it. When we seen the mob there, we decided the best thing to do was just slow down and go through the exit slow and get back on the interstate at least.

Q Now, what exit was this?

A It was the Warm Springs exit off I-90.

Q You were proceeding northbound from Butte; is that correct?

A Correct.

Q You were going to take the right-hand exit off for what purpose?

A To go to the Montana Power yard, to show up for work that morning.

Q All right. How far was that yard from the exit ramp?

A Approximately half a mile.

Q All right. What happened? So you intended to pull off and then just go right back off the other ramp on to Deer Lodge; is that correct?

A We decided on the way to work that morning we would not cross picket lines.

Q All right.

A And as we were beginning to slow down to about five miles an hour, we began hearing several thumps on the side of the car. First we thought it was gunfire, and I later found out steel balls were shot out of slingshots at us.

Q Designate the materials that are used for these devices?

A A wrist rocket with a 30-caliber ball in it.

Q Did you see people shooting those objects at you?

A Yes, I did, I seen about six people standing there shooting at us with them.

Q Would you tell the Court the scene that you observed in the roadway. Was it possible for you to have driven in, turned right, and driven up the road?

A No, it was not.

Q Why?

A There was cars parked in the road and there was over 150 people standing there.

Q I'm handing you Plaintiff's Exhibits 4 and 5, and ask you, do those photographs depict -- accurately depict the scene or approximately depict the scene that you saw that morning?

A Yes, it does.

Q Tell the Court what happened next after you saw these wrist rockets, 30-caliber balls being shot?

A The person that was sitting on the passenger side, Tim Nugent, looked out at the crowd and saw a person aim a wrist rocket right towards his head, so he immediately ducked. And no sooner than he got his head down, the side window shattered out and the ball came through the car. If we wouldn't have ducked, I would probably be dead today.

Q All right. Then what happened?

A A few more kicks on the car and finally I said hell with it, and I gassed it to get the heck out of there and went out the Galen exit and went in the back way to the yard where I talked to Captain Wilkinson from the Anaconda Police about filing charges. And his answer to that was a four-letter word, and he told me my charges can wait.

Q Did he indicate any interest in resolving your complaint or problem?

A No, he didn't.

Q Did you observe law enforcement vehicles at this Warm Springs exit when you exited?

A There was an Anaconda Police car within 100 feet when all the violence was going on, and he did nothing to stop it.

Q Did you -- Have you ascertained the amount of damage to your vehicle?

A It's costing $125 to put the window in. I got a few dents to get pounded out, and I wouldn't know the cost of that until it's finished.

Q Were you afraid for your life at that point?

A Yes, I was. My life was threatened a couple days after that by union people.

MR. ROBINSON: You may examine.

MR. HILLEY: No questions.

THE COURT: No cross?

MR. DUFFY: I don't have anything.

THE COURT: You are familiar with the Anaconda, you say, this is the Anaconda City Police?

THE WITNESS: Yes.

THE COURT: Warm Springs is in which County, do you know?

THE WITNESS: I'm not sure, I believe it's in the same county as Anaconda.

THE COURT: The City of Anaconda is in Deer Lodge County?

THE WITNESS: Yes.

THE COURT: The City of Deer Lodge is in Powell County, do you know that?

THE WITNESS: Yeah.

THE COURT: Okay. And you were going to the Power Company substation at Warm Springs?

THE WITNESS: That is where our intentions were, but when we seen the mob, we did not make any attempt to turn through the crowd.

THE COURT: And at that time you say there was -- what was it -- the Anaconda Police, it was Anaconda City Police?

THE WITNESS: Captain Wilkinson.

THE COURT: When did you do that?

THE WITNESS: Immediately after we took off out of there, we went up the Galen exit and took the dirt road into the back way. And he pulled into the yard just about the same time we did. And I got out and the first time I asked him to come over and look at my car, and he refused. The second time I made him come over and look, and he still would not take any kind of complaint or let me file any kind of charges.

THE COURT: And he refused to have you file charges?

THE WITNESS: Yes, he did.

THE COURT: Did he tell you what could be done?

THE WITNESS: He said -- All he told me, your charges can wait.

THE COURT: Can wait. Did you do anything further, did you talk to the County Attorney of the County?

THE WITNESS: No, sir, I did not.

THE COURT: You say you were threatened several days later?

THE WITNESS: Well, my brother was sitting in Fran's Bar when I was outside, and two union members, one of the business agents for the Laborers in Butte and another one is out of the Pipefitters in Helena, came in the bar after him. The one from Helena came over, tried to grab him, tried to hit him, my brother jumped over the bar and the bar patrons ran the two fellows off.

THE COURT: Where is Fran's Bar?

THE WITNESS: Fran's Bar is in Butte,

Montana.

THE COURT: In Butte, okay. This wasn't at the picket line or anything like that?

THE WITNESS: It was Tuesday after the Saturday, three days after.

THE COURT: All right.

THE WITNESS: And then I filed a complaint with the Labor Board last Sunday, Monday night, and an individual answering the same description as the fellow from Helena knocked on my Foreman's hotel door. He was from Helena, because the car was parked out there. He was looking for me, but I wasn't there. He said he was a large man, about six foot four, heavy build with sandy colored hair.

THE COURT: Okay. Counsel.

MR. ROBINSON: Your Honor, I just think the record -- I'd like to clarify for Your Honor, that Anaconda/Deer Lodge County is in a consolidated form of government.

THE COURT: We know Silver Bow/Butte City Police in Butte would be the same thing in Anaconda. The Sheriff's Department is within it, it's a consolidated --

MR. ROBINSON: In both counties, Butte/ Silver Bow/Anaconda/Deer Lodge, is a consolidated form of government and the police force for those counties is one consolidated enforcement under the auspices of the Sheriff's Department.

THE COURT: And is the town of Warm Springs in the County of Deer Lodge?

MR. ROBINSON: Yes, Your Honor.

THE COURT: All right. Thank you. May this witness then be excused?

MR. HILLEY: Your Honor, I just have one question. Your question prompted a question.

THE COURT: That is why I asked if you had any questions.

CROSS-EXAMINATION BY MR. HILLEY:

Q Mr. Meary, who were you going to file --

A Unknown union members. I did not recognize any of these pople. I had no quarrel with them at all, I just wanted something done so people would leave me alone and let me support my family.

MR. HILLEY: No further questions, Your Honor.

THE COURT: All right, Counsel. May the witness be excused?

MR. ROBINSON: Yes.

THE COURT: Thank you very much.

All right. I'm going to recess here. I realize I took up some time this morning, and probably I was too short. But again, I reiterate what I said before, that that's the ground rules that we're going under, are set out here. And even though we have come to a conclusion to some of this, I'd like -- Anyway, these are the criteria, I'm going to recess this case until 9:00 o'clock tomorrow morning. Now, we have another case scheduled this afternoon, so that we'll continue testimony at that time. But I will tell you now, I've told you before and I will tell you again, that unless you can overcome it, you have to comply and I have to find facts that we have found all these facts to be true under 107 29 103, so --

MR. ROBINSON: Your Honor, may we see the Court in chambers and discuss the scheduling problem.

THE COURT: I'm going now, and I will be back approximately quarter to 1:00. I'll be glad to talk to you at that time in chambers.

MR. ROBINSON: We have some considerable scheduling difficulties for tomorrow morning that we would like to discuss with the Court.

THE COURT: Very well. At quarter to 1:00, I'll be glad to talk to all Counsel in chambers.

HEARING CONCLUDED

CERTIFICATE OF REPORTER

STATE OF MONTANA)
) ss.
County of Cascade)

I, ANNE PERRON, do hereby certify that:

I am a duly appointed, qualified and acting Court Reporter of the Eighth Judicial District of the State of Montana; that I reported all of the foregoing proceedings had in the above-entitled action, and the foregoing transcript contains a full, true and correct transcript of the said proceedings, with the following corrections to the original transcript done by a fellow reporter in my absence following jaw surgery, including all of the testimony introduced and all the rulings of the Court.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of October, 1983.

Anne Perron
ANNE PERRON,
Official Court Reporter

CORRECTION SHEET

PAGE	LINE	CORRECTION
3	14	Profession or occupation
3	19	county
4	5	briefs. I quess it was.
5	5	this --
5	14	what your activities
6	9	this caravan
6	15	then what next happened?
6	19-20	geographt of Freeze Out to the pipeline
7	1	this caravan
7	9	no farther
7	22	go on it
7	24	this caravan group
8	10	of objects or devices did with a beer keg
8	24	(no dash)
9	7	don't lead
11	4	did the Haines Pipeline
12	22-23	Hilliard
13	3	check, corraborate that
	4,7,10	Hilliard
	12	county
	13	Hilliard
	25	activity that was
14	6	Forsyth notified us

PAGE	LINE	CORRECTION
15	2	case of emergencies,
16	10, 15	Hilliard
18	2	them, observing them
20	8	how many
	9	as to the group
	20	Did you see any other devices or objects
23	2	that were not authorized
24	2	marked for identification
28	4	Plaintiff's Echibit 1-C
	7	Montana's statement of registered ownership
	19	of any vehicles, of another behicle that
	23	in color, to construction and general
29	7	and General, it says
31	11	his responsibility for the
	17	responsibility to
	25	this receipt?
33	6	Hilliard
36	8	Hilliard
37	10	caravan
38	6	caravan, not garrison
41	7	There would be violence in ...
43	23	on July 23rd
44	11	No, I don't.
	25	peace officers

PAGE	LINE	CORRECTION
50	24	Hilliard
51	1	and talked -- do you know Mr. Hilliard
	13,16	Hilliard
	18	wherther or not
54	10	Mullen
56	5	the day off, yes,
57	12	what types of weapons
	22	you mean over this period
58	21	August 5th, I believe
60	11	make another indication
	14	during the day and I had
64	7	Just state your objection, sustained
	13	These two.
67	13	there? It's important.
70	1	Have you also or
	3	Local 400
71	11	Bill Seavers
	25	into a convenience mart
73	15	their vehicles and departed in a
	18	Seavers
74	12	I notified
	13	me to notify
75	20	left side
76	19	right side

PAGE	LINE	CORRECTION
79	11	right side
80	16	us a couple minutes was his
81	11	somewhere
83	10	crew. Now there
84	22	Seavers
85	17,20	Seavers
	21-22	diversely engaged as the military terms it,
86	1	Seavers
	18	thing going and that's going to be the end of the problem and we got ...
87	3	stayed in the area
	10,17,23	Seavers
88	20	was another person lighting
89	4	right side
92	5	incidents at Freeze Our point
94	22	no acts of violence
97	19-20, 24	Seavers
98	8	Seavers
	11	with them approximate to them?
100	5	thrown it farther
103	9	as cecurity
	21	Burnhollow Road
116	10	foreman's

///

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Paul G. Hatfield, District Judge.

Taken at the Federal Building
Great Falls, Montana
Friday, August 12, 1983 - 9:00 A.M.

HAINES PIPELINE CONSTRUCTION, INC., an Oklahoma corporation,

Plaintiff,

-vs-

NO. CV-83-94-BU

DAN JONES, individually and as a member, agent, representative, and/or officer of Construction and General Laborers Union Local No. 1334, District 2, AFL-CIO; CONSTRUCTION AND GENERAL LABORERS UNION LOCAL NO. 1334, DISTRICT 2, AFL-CIO; LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 254, AFL-CIO; EUGENE "GENE" FENDERSON, individually and as a member, agent, representative, and/or officer of Laborers International Union of North America, Local No. 254, AFL-CIO; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 400, AFL-CIO; JIM MAYES and BILL BURLINGAME, individually and as officials, agents, and/or officers of International Union of Operating Engineers, Local No. 400; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 375, AFL-CIO; DAN F. HILLARD, individually and as International Representative and/or agent of the International Union of Operating Engineers, Washington, D.C.; BUTTE TEAMSTERS LOCAL NO. 2, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-

HOUSEMEN & HELPERS OF AMERICA, INDEPENDENT; JIM ROBERTS, individually and as a member, agent, representative, and/or officer of Butte Teamsters Local No. 2, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Independent; MONTANA STATE AFL-CIO; PIPELINERS LOCAL UNION NO. 798 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA; TED POOLE, individually and as a member, agent, representative, and/or officer of Pipeliners Local Union No. 798 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada; UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY, LOCAL 41; and MITCHELL "MITCH" MIHAILOVICH, individually and as a member, agent, representative, and/or officer of United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 41,

Defendants.

APPEARANCES

DOUGLAS A. BUXBAUM, Esq., and DONALD C. ROBINSON, Esq., of the law firm of Poore, Roth & Robinson, P.C., 1341 Harrison Avenue, Butte, Montana 59701-4898,
appearing on behalf of the Plaintiff.

JOSEPH W. DUFFY, Esq., 121 4th Street North, Suite 2G, P.O. Box 186, Great Falls, Montana 59403,
appearing on behalf of Defendants Laborers Local 1334, Laborers Local 254, Dan Jones, and Eugene Fenderson.

D. PATRICK McKITTRICK, Esq., and TIM McKITTRICK, Esq., of the McKittrick Law Firm, Suite 622, Strain Building, 410 Central Avenue, P.O. Box 1184, Great Falls, Montana 59403, appearing on behalf of Defendant Montana State AFL-CIO.

BEN HILLEY, Esq., and EMILIE LORING, Esq., of the law firm of Hilley & Loring, P.C., 121 4th Street North, Suite 2G, Great Falls, Montana 59401,

appearing on behalf of Defendants Pipeliners Local 798, Ted Poole, Plumbers Local 41, and Mitch Mahailovich.

BARRY L. HJORT, Esq., 1420 Cedar Street, Helena, Montana 59601,

appearing on behalf of Defendants Union of Operating Engineers Local 400, Jim Mayes, and Bill Burlingame.

Reported by John Wissenbach, RPR, Freelance Court Reporter and Notary Public for the State of Montana, residing in Hamilton, Montana.

INDEX

NAME OF WITNESS: PAGE

PHILLIP D. WEBB

Direct Examination by Mr. Robinson 3
Cross-Examination by Mr. Duffy 8
Cross-Examination by Mr. McKittrick 10

LAURENCE WILLIAM PERSINGER

Direct Examination by Mr. Robinson 12
Cross-Examination by Mr. Duffy 31
Redirect Examination by Mr. Robinson 43

JAMES MORLEY

Direct Examination by Mr. Robinson 53
Cross-Examination by Mr. Duffy 58

DAVE MORLEY

Direct Examination by Mr. Robinson 60
Cross-Examination by Mr. Hilley 64

HOYT McDANIEL

Direct Examination by Mr. Robinson 65
Cross-Examination by Mr. Hilley 70

JAMES W. MURRY

Direct Examination by Mr. Robinson 71
Cross-Examination by Mr. McKittrick 75
Redirect Examination by Mr. Robinson 77

DOUGLAS ALLEN HAINES

Direct Examination by Mr. Buxbaum 86
Examination by The Court 111
Direct Examination (Resumed) by Mr. Buxbaum 113
Cross-Examination by Mr. Duffy 114
Cross-Examination by Mr. McKittrick 121
Redirect Examination by Mr. Buxbaum 124

INDEX, continued

NAME OF WITNESS: PAGE

WILLIAM BRADFORD HAINES

Direct Examination by Mr. Buxbaum 127
Cross-Examination by Mr. Hilley 150
Cross-Examination by Mr. Duffy 153
Cross-Examination by Mr. McKittrick 159
Redirect Examination by Mr. Buxbaum 161
Examination by The Court 162
Redirect Examination (Resumed) by Mr. Buxbaum ... 163
Recross-Examination by Mr. Duffy 165
Recross-Examination by Mr. McKittrick 165
Redirect Examination by Mr. Buxbaum 166

EXHIBITS:

Plaintiff's Exhibit No. 19
marked for identification 73
received in evidence 74
Plaintiff's Exhibit No. 4
received in evidence 112
Plaintiff's Exhibit No. 5
received in evidence 112

Certificate of Court Reporter 179

FRIDAY, AUGUST 12, 1983

WHEREUPON, the following proceedings were had and entered of record:

THE COURT: Court is in session. Are we all present?

MR. BUXBAUM: Present for the Plaintiff, Your Honor.

THE COURT: All right. We're ready for your next witness, then.

MR. ROBINSON: I'd call Phil Webb.

Thereupon,

PHILLIP D. WEBB,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

THE CLERK: Please be seated in the witness box. State your full name, and spell your last name.

THE WITNESS: Phillip D. Webb; W-E-B-B.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q Would you state your home address, Mr. Webb.

A Post Office Box 123, Woodward, Oklahoma.

Q And are you employed?

A Yes.

Q By whom?

A Haines Pipeline.

Q How long have you been employed by Haines Pipeline?

A Since May of 1981.

Q And what is your position with the company?

A Parts supervisor.

Q Do you maintain your temporary residence in Montana at this time for the purposes of working for Haines Pipeline?

A Yes, at Helena.

Q And are you working on a pipeline project that commences at Warm Springs, Montana and is going to terminate at Cut Bank, Montana?

A Yes, sir.

Q Are you married?

A No, sir.

Q Would you tell the Court if anything unusual happened to you on July 23, 1983 when you were coming to work at the Haines Pipeline project.

A Yes. As I was entering the Warm Springs turnoff from the south on the frontage road, as I approached the stop sign, I stopped, looked to my right, and there was a bunch of individuals to my right underneath the -- on the other side of the overpass there. And then I kind of looked to the left there, and there was a patrol car sitting there to the left of me. And I --

Q A law enforcement vehicle?

A Yes. It was a blue and white one. And I made my turn to the right and proceeded up to, oh, probably within about, I'd say, a hundred feet of the picket line which was there. And there was a vehicle coming out from the other side, a cream-colored car, and they stepped to the side and let the vehicle through, and so I -- I thought that they was, you know, letting people through there, so --

Q How many people would you estimate were in this crowd?

A Oh, I would say roughly a hundred fifty.

Q Okay.

A And, like I say, I thought they was letting people through there, so I proceeded very slowly, and --

Q Excuse me. When this vehicle passed through, coming from the other direction, did the group have to step back to let this vehicle through?

A Yes.

Q All right, go ahead.

A I proceeded very slowly, thinking, you know, that I could drive on through there. I got, oh, probably within about fifteen, twenty feet, and one fellow in particular started walking out of the crowd. And he had like a camera or something around his neck, and I thought he was a lead fellow. So I was going very slow, so I just kind of stopped, and he -- then about -- oh, he made about four steps, and then a whole bunch of them just kind of come running and started liked beating on the pickup. They broke the handle off, smashed my windshield in about three different places, broke the side window clear out, put a big gash in the top of the door on the right-hand side, kicked the door in on the right-hand side, put a big dent in the back of the club cab pickup, put a big dent in the back of that. And I had an acetylene bottle in the back, and they pulled it over and beat on the hood. And then, you know, like they done this all in just a matter of a few seconds. And I immediately put it in reverse and backed up, backed up far enough to where I could exit out on the exit ramp. When I backed up, they followed me for just a little ways there -- not very far -- and then they stopped, and I backed on up to where I could make my exit. I went forward then, back to my left, made my exit, went down to the Galen exit, which is about four miles, and went into the office from the back way there.

Q How far was the law enforcement vehicle parked from the group when your vehicle was damaged?

A Well --

Q Approximately.

A Approximately, I'd say, a hundred feet from the turn.

Q Did any law enforcement personnel step forward or make any attempt to restrain this conduct?

A No, sir.

Q I'm handing you what's been marked and introduced as Plaintiff's Exhibit 8, a photograph. In that photograph, can you identify the individual -- and the evidence previously by the photographer was this photograph was taken the following day, July 24th. Do you see any individuals in that photograph that you recognize?

A Yes, sir.

Q Would you point out to the Court what individual you recognize.

A The fellow right there.

Q The one that appears to have a camera strapped around his neck?

A Yes.

Q Was that the same individual who advanced toward your car on the 23rd of July?

A Repeat --

Q Is that the same individual who you believe advanced toward your car?

A Yes. Yes.

Q Do you know his name?

A No, sir.

Q I'm handing you Plaintiff's Exhibits 4 and 5, which have been marked but not put into evidence at this point. Does the scene depicted in those photographs accurately depict the scene that you observed of picketing and the group that was at the bottom of the exit ramp when you came off that exit ramp on July 23?

A Yes, sir.

MR. ROBINSON: You may examine.

Excuse me; I have one further question.

Q (BY MR. ROBINSON) Mr. Webb, were you afraid for your safety at that particular time?

A Yes, sir.

Q Did you do anything to provoke this confrontation or provoke this violence?

A No, sir.

Q Did you say anything to anybody?

A No, sir.

MR. ROBINSON: You may examine.

CROSS-EXAMINATION

BY MR. DUFFY:

Q I just have a couple questions, Mr. Webb. What kind of vehicle were you driving?

A An '81 Ford, club cab.

Q And what color was the car?

A Brown and tan.

Q What license plates were on the car?

A Sir, I don't know.

Q Were they Montana plates?

A I'm not for sure. We had Montana plates put on. I don't remember whether it had Montana or Oklahoma tags at the time.

Q It could be Montana, Oklahoma, or Texas, you say?

A No.

Q Montana or Oklahoma?

A Yes, sir.

Q By the way, where do you live in Montana?

A At the Colonial Inn in --

MR. ROBINSON: Just a second, Your Honor. I don't think that testimony's relevant, and I'd like an order from the Court protecting the exact location of this witness's --

MR. DUFFY: I'm talking about city, Your Honor.

MR. ROBINSON: He's already testified he lives in Helena.

THE COURT: Let him testify. He's capable.

Q (BY MR. DUFFY) Do you live in Helena?

A Yes.

Q Do you drive to the job site from Helena?

A Yes.

Q What route do you normally take to your office there in Warm Springs from Helena, or did you take on that day?

A That day I was living in Anaconda, at the present, at that time.

Q Okay. So you've since moved to Helena?

A Yes.

MR. DUFFY: That's all I have.

THE COURT: Other cross?

MR. HILLEY: No, Your Honor.

MR. McKITTRICK: Your Honor, may I approach the bench and examine those pictures?

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. McKITTRICK:

Q You testified concerning Plaintiff's Exhibit 8, did you not?

A Yes, sir.

Q There appears to be a law enforcement officer in that picture; is that correct?

A Yes, sir.

Q Can you identify him?

A No.

Q It appears that he has everything at bay at this particular time; is that not true?

A Maybe.

Q The other people in the picture do not seem to be advancing, seem to be just standing there; is that correct?

A That's correct.

Q The police officer has no weapon out?

A Not that I can see.

MR. McKITTRICK: No further questions.

THE COURT: Do you have anything else?

MR. HJORT: No, Your Honor.

THE COURT: Redirect?

MR. ROBINSON: Your Honor, I would just simply like to note for the Court the picture Plaintiff's Exhibit 8 was taken the following day, July 24th.

THE COURT: That's my understanding from the prior witness's testimony.

MR. ROBINSON: I have no further questions.

THE COURT: Thank you. May this witness be excused?

MR. ROBINSON: Yes, Your Honor.

MR. HILLEY: Yes, Your Honor.

MR. DUFFY: Yes, Your Honor.

THE COURT: Thank you very much. You're excused. You're free to go.

THE COURT: Next witness?

MR. ROBINSON: I'd call Larry Persinger as an adverse witness.

Thereupon,

LAURENCE WILLIAM PERSINGER,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

THE CLERK: Please be seated. State your full name, and spell your last name.

THE WITNESS: Laurence William Persinger;

P-E-R-S-I-N-G-E-R.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q What is your address, Mr. Persinger?

A 1800 Phillips Avenue, Butte, Montana.

Q What is your profession or occupation?

A I'm an assistant field representative for Laborers Union 1334.

Q Where is the principal place of business or the home address of the Construction and General Laborers Union Local 1334?

A It's in Great Falls. Our mailing address is Post Office Box 1178.

Q 1178?

A Yes.

Q How long have you been a field representative of the Laborers Union?

A Since approximately March or April of 1977. There have been periods of time when I've been laid off from work construction.

Q From the period of July 23 through August 5th of 1983, did you hold the position you just testified about?

A Yes.

Q Do you drive a vehicle owned by the Laborers Union?

A Yes.

Q And what is the license number of that vehicle?

A The one I'm currently driving?

Q Yes.

A I can't tell you. I'd have to check. I'm not sure what it is.

Q What county is it registered in?

A It's registered out in Great Falls.

Q Is it a 2-T number?

A Yes.

Q And what is the vehicle that you drive?

A It's a Chevrolet truck.

Q What year?

A '77 or '78.

Q Would the license number 2T-27833 be in accordance with your recollection of the license plate number of the vehicle you drive?

A I've already stipulated I'd have to check. I don't know.

Q The vehicle is registered to and owned by the Union; is that correct?

A The vehicle I'm driving. I'm not sure about the one you're speaking of.

Q The vehicle that you drive is registered and owned by the Laborers Union; is that correct?

A Yes, it is.

Q Mr. Persinger, I'm handing you Plaintiff's Exhibit 8, the photograph, and ask you if you can identify any individuals in that photograph.

A I can identify myself standing there.

Q All right. Could you lean over and point to the Court where you're standing.

A To the judge or to you?

Q To the Court.

A I'm standing there.

Q Just your face is barely visible?

A Yes.

Q All right. Do you see any other individuals you recognize in that photograph?

A Yes.

Q Please tell me who they are.

A Here's Jim Connors · the police chief in Anaconda; Maurice McCaughey, a friend of mine from Butte.

Q Is he affiliated with the state AFL-CIO?

MR. McKITTRICK: I'm going to object to that, Your Honor. I don't know what "affiliated" means.

THE COURT: Overruled, if you know.

A I have no personal knowledge of who he is or is not affiliated with that I could swear to.

Q (BY MR. ROBINSON) All right, go ahead. Who else can you identify?

A The gentleman standing here appears to be Kurt Wilson, but I couldn't swear to it. The general appearance is the same, but I can't see his face.

Q Which gentleman is that?

The gentleman holding the iron pipe in his right hand?

A I don't know what kind of -- what he's holding.

Q It looks like a drill bit, doesn't it?

A Yes. But, as I say, I can't see his face.

Q Okay, I'll show you a better photograph of that gentleman: Plaintiff's Exhibit 7.

A Yes, this appears to be Kurt Wilson. I do know him.

Q All right, holding what appears to be about a four-foot-long drill bit?

A Yes.

Q Did you see that weapon that day?

MR. DUFFY: Objection to the characterization of the weapon, Your Honor.

THE COURT: Sustained.

Q (BY MR. ROBINSON) Did you see that object or device in his hand that day?

A What day is that?

Q The day the photograph was taken.

A I have seen Kurt carrying something similar. I can't tell you what day it was specifically.

Q What labor organization, if any, is he affiliated with?

A He's a member of Construction and General Laborers Union 1334.

Q He's a member of your union?

A Yes.

Q Going back to Plaintiff's Exhibit 8, do you see anybody else you recognize in that photograph?

A Not that I can recognize from this photograph, no.

Q Handing you Plaintiff's Exhibit 10, do you see a picture of what appears to be a baseball bat to which a placard is attached?

A It's a round object. It could be. It may not be; I do not know.

Q Plaintiff's Exhibit 13 may be a little better photograph, Larry. Do you see a placard with what appears to be the end of a baseball bat attached to it?

A Again, it's a round object. It could be a baseball bat.

Q Did you see that on July 24th?

A I don't recall seeing that, no.

Q Handing you Plaintiff's Exhibit 12, I'll ask you can you identify any of the individuals shown in that photograph.

A Again, Police Chief Connors from Anaconda, two of his deputies that I've seen -- I don't know what their names are -- myself, Morris McCaughey, Mitch Mihailovich, Ernie Keepke (phon.) --

Q Ernie Keepke is of the Operating Engineers Union; is that correct?

A Yes.

Q Does he hold a position in that union?

A I think he does, yes.

Q All right, anyone else?

A There's some other guys here that I'm familiar with, but I can't put names on some of them.

Q Have you been involved in picketing at the Haines Pipeline Construction project in the last three weeks?

A I have been on some picket lines that were established on Haines Construction project, yes. Not all of them; some of them.

Q Were you on the picket line on July 23, 1983?

A Yes, I was.

Q Were you on the picket line on July 24th, the date that your picture's shown?

A Yes.

Q Were you on the picket line on any other days?

A Yes, I was. I'd have to sit down with a calendar if you wanted all the specific dates, to be able to tell you properly what days I was there.

Q All right. Do you recall that on Monday, July 25th, Haines did not operate all of that week?

A Yes.

Q And the next time Haines employees went to work was on Monday, August 1st; isn't that true?

A I have no personal knowledge of that. I don't know.

Q Is that in accordance with your recollection?

A That week I believe I went out on picket on the -- Tuesday, which would have been the 26th.

Q You went out even though they weren't working?

A Oh, I'm sorry; the following week. What was the date?

Q Tuesday, August 2nd.

A Was that the day they started up?

Q I'll represent to you that they commenced their employment again on Monday, August 1st.

A I was out on Tuesday, August 2nd, then.

Q All right, any other days that week?

A Yes, Wednesday, Thursday, Friday.

Q Friday, August 5th?

A Yes.

Q Did you drive a vehicle to the picketing area on August 5th, Friday?

A Yes.

Q What was the vehicle that you drove to the picketing?

A The truck that I drive that belongs to my union.

Q That you previously identified, with the Great Falls license plates?

A Yes.

Q Where did you drive that from?

A Butte.

Q And where did you drive to first?

A Warm Springs. Actually, Morrell Junction.

Q Did you then proceed to Deer Lodge?

A No. I stayed at Morrell Junction from approximately 5:30 to 7:00.

Q Then where did you go?

A Then we drove into Deer Lodge.

Q All right. And then following Deer Lodge, did you drive to a location known as Freeze-Out?

A I'm not familiar with the names that they've got for areas in the Deer Lodge area. I did -- from what I heard yesterday, I did drive to the Freeze-Out area, I believe. And I'm not that familiar with the names of the area.

Q You were in court yesterday when Officer Rauch testified, were you not?

A Yes.

Q And you heard him testify he followed the caravan of vehicles from the 4B's in Deer Lodge to a place approximately seven miles east of Deer Lodge to a gate?

A Yes.

Q You were in that caravan, were you not?

A Yes.

Q You were driving the union vehicle?

A Yes.

Q He testified that the caravan was strung out, a lead vehicle and then subsequent vehicles, and about twelve or thirteen vehicles. Is that your recollection?

A Yes, in that area. I can't be sure of the total amount. Twelve, thirteen sounds very close.

Q Was anyone riding with you?

A James McGarvey.

Q Would you identify James McGarvey for the Court, please.

A A friend of mine.

Q He's also a union representative, is he not?

A Yes, he is.

Q He's affiliated with the American Federation of Teachers --

A Yes.

Q -- out of Helena?

A Yes.

Q And he's also involved with the State AFL-CIO?

MR. McKITTRICK: Objection.

THE COURT: If you know.

A I can't say for sure what his affiliation is.

Q (BY MR. ROBINSON) About what rank in the order of the caravan were you?

A Oh, probably middle to the last half; somewhere in that area.

Q What was your purpose of going out there?

A To establish a peaceful picket line.

Q Did you see a gate cut?

A No, I did not.

Q You didn't see a gate cut?

A No.

Q Did you see any activity go on at the gate?

A No.

Q Did you get out of your vehicle?

A I think I got out for a minute, yes.

Q Did you see blue smoke, the blue smoke that Officer Rauch testified to, near the gate?

A No, I didn't.

Q You were subsequently with the group of people that advanced on the Haines Pipeline group on the pipeline right-of-way; isn't that true?

A Yes.

MR. HILLEY: Object to the characterization "advanced."

THE COURT: He's already answered.

A I was with the group of people on the picket on Haines Pipeline, right.

Q (BY MR. ROBINSON) And you were with the group of people that were throwing rocks on the Haines Pipeline people?

A I cannot say -- I did not throw any rocks, and I can't say -- I know rocks were thrown, but I don't know by whom.

Q And you were there when the dynamite went off?

A Yes, I was.

Q And the union vehicle was parked on the pipeline right-of-way. You parked it there and left the vehicle; isn't that true?

A It was not parked on the right-of-way; it was parked up on a hill away from the right-of-way.

Q Do you know the ownership of the property at which this vehicle was parked?

A No, I have no idea.

Q Were there any other members of your union in that group of people?

A One that I can recall, and it's not impossible that there wasn't somebody else there. I can only recall one of my members being there.

Q And who was that?

A The name is Craig Hansen.

Q Where's he from?

A Butte.

Q Is it your testimony that picket signs were carried out on the project?

A Yes.

Q How many?

A I don't know. They were in several vehicles.

Q Were the pickets taken out of the vehicles and carried?

A As far as I know. I didn't carry one myself.

Q All right. Your union does not have a contract with

Haines Pipeline Construction Company; isn't that true?

A That's true.

Q And you don't represent any of their employees; isn't that true?

A That's true.

Q And you've never filed a petition with the National Labor Relations Board asking for an election to determine whether a majority of the employees want to be represented by your union; isn't that true?

MR. DUFFY: Objection, Your Honor. I submit it's irrelevant. There's no allegation in the complaint as to NLRB action, and I think that's extraneous matter in this case.

THE COURT: Probably so, but I'll allow the answer. You may answer.

A I have not filed, no.

Q (BY MR. ROBINSON) Are you acquainted with an individual by the name of Larry Hawe from Butte?

A I know Larry Hawe, yes.

Q And do you know him as having been or presently being a steward of the Association of Master Plumbers and Pipefitters?

A Larry is currently working for the City of Butte under the jurisdiction of the Laborers Union.

Q He has in the past been a member of the Plumbers Union; isn't that true?

A That's true.

Q And he's been a union steward; isn't that true?

A I cannot testify to that.

Q And do you know whether or not he is presently an officer of that union?

A I do not know.

Q He was on Freeze-Out Hill with you on Friday, August 5th; isn't that true?

A Yes, he was there.

Q And Jim Mayes of the Operating Engineers Union was there?

A Jim Mayes was there, yes.

Q And he was arrested. Did you see him arrested?

A I seen him taken into custody, yes.

Q Now, do you know a Jerry Driscoll from Billings?

A Yes, I do.

Q Would you identify him for the Court.

A Identify how?

Q By what position, please. What do you know him as?

A He is a business agent for Labor -- Construction and General Laborers Union out of Billings.

Q Dan Jones, would you identify him by position.

A Dan Jones is business manager of Construction and General Laborers Union 1334.

Q And Eugene Fenderson?

A Is business manager of Laborers Local 254.

Q Are the Laborers Unions in Montana associated under a district council?

A There is a district council, yes.

Q What's the number and name of that district council?

A Montana District --

MR. McKITTRICK: Your Honor, I'm going to object as irrelevant.

THE COURT: Overruled. Go ahead.

A Montana District Council of Laborers. I'm not part of it. That's all I can tell you.

Q (BY MR. ROBINSON) All right. What local unions belong to the district council?

A As far as I know, the three that we just mentioned.

Q 1334?

A 98 and 254.

Q And 98 is Helena, and 254 is Billings?

A 98 is Billings, and 254 is Helena.

Q I'm sorry. And those three local unions comprise the district council; is that correct?

A Yes.

Q Have you become acquainted in the past month or six weeks with an individual by the name of Dan Hillard?

A Yes, I've met Mr. Hillard.

Q What is your understanding of his position?

A I don't honestly know what his position is.

Q Do you understand him to be a representative of the Operating Engineers Union, International Union?

A That's my understanding, but I don't know his position.

Q Out of Washington, D.C.?

A Again, I'm not sure where he's based at.

Q When did you first become acquainted with Mr. Hillard?

A Somewhere middle to the end of July. I can't give you a specific date.

Q And isn't it true that he's been involved in picketing activity and these various groups since July 23rd, 1983?

A I have seen him on picket lines that I've been on on numerous occasions. I can't say how many times he's been there.

Q Was he involved in the group that went to Freeze-Out Hill?

A No.

Q Now, there's been testimony that a bus was chartered by Mr. Driscoll out of Billings to transport people from southeastern Montana to this project. Did you have any --

MR. DUFFY: Your Honor, I'm going to object to that characterization. I don't think there is any testimony to that effect.

THE COURT: That's true. Go ahead and restate the question.

Q (BY MR. ROBINSON) Do you have any knowledge of a bus being chartered by Jerry Driscoll or any representative of the laborers out of Billings to bring personnel to the Warm Springs-Deer Lodge area?

A There was a bus there. I can't give you any information in regards to who might have chartered the bus.

Q Was that a Union Express bus?

MR. McKITTRICK: Your Honor, I'm going to object to this.

THE COURT: Overruled. You say you did see the bus?

A I seen a bus.

THE COURT: All right.

Q (BY MR. ROBINSON) Did you see the marking on the bus, a sign or any identification on the bus?

A I believe your statement Union Express was the name of it. It was Union something. I believe it was Express now.

Q And you saw that bus at Morrell Junction at the Warm Springs exit on August 5th?

A On August 5th, yes.

Q And then you saw that bus in Deer Lodge; isn't that true?

A That's true.

Q On July 23rd there were also buses at the site; isn't that true?

A At what site?

Q At the Morrell-Warm Springs site.

A There was a bus.

Q A bus?

A Yes.

Q And what was the identification, if any, of that bus?

A I don't recall. I don't believe I even noticed it.

Q That bus was chartered out of Great Falls; isn't that true?

A I believe so.

Q And it was the Big Sky Bus Lines; isn't that true?

A I don't know; it could have been.

Q Isn't it true that it was chartered by Local 1334 out of Great Falls?

A I can't personally answer that.

Q Do you have any knowledge that it was chartered by any official of 1334?

A I don't know. I know that the bus was there; I can't give you any information in regards to who may have chartered it. I'm not aware of it.

Q You do know it was chartered out of Great Falls; isn't that true?

A I know the bus came out of Great Falls. I assume it was chartered out of Great Falls.

Q But it's your testimony under oath that you don't know who chartered the bus?

A I don't have any personal knowledge of it, no.

Q Approximately how many people would you estimate were at Morrell Junction on July 23?

A July 23? I'd say approximately two hundred, at maximum. And that's a guess, estimate.

Q I'm handing you what have been marked as Plaintiff's Exhibits 4 and 5. I'll ask you if those photographs accurately depict the group of picketers at Morrell Junction on July 23rd.

MR. DUFFY: Objection.

THE COURT: Overruled.

A It could be. The pictures are so faint, and it's taken from such a distance, I couldn't swear to it, but it does appear to be.

Q (BY MR. ROBINSON) And it's true that that group blocked the entire roadway? Isn't that true?

A No. There was vehicles that passed that roadway that I witnessed.

Q The group had to step out of the way to let them through; isn't that true?

A People were walking back and forth. You get two hundred people in a small area like that and it's hard not to --

Q It's hard not to block a road, isn't it?

THE COURT: Counsel, stay with questions.

MR. ROBINSON: Okay.

THE COURT: Did you finish your answer?

A Yes, sir.

THE COURT: All right.

Q (BY MR. ROBINSON) Did you ever see Eugene Fenderson on the picket lines on the days that you were involved in the picketing?

A On some occasions.

Q When Mr. Mayes was confronted by the law enforcement officer up at Freeze-Out, did you hear him acknowledge responsibility or take responsibility for what had happened?

A Very definitely not.

Q You did not hear that statement?

A He did not make that statement.

Q He did not make that statement?

A No.

Q Did you hear Officer Hauge's testimony yesterday?

A Yes, I did.

Q And you dispute and deny his testimony that Mr. Mayes said he would assume responsibility for what had happened?

A Officer Hauge was talking about taking in all thirty-five people, or thirty people -- thirty to thirty-five that were there. Mr. Mayes informed him, "Rather than do that, why don't you just put the blame for whatever you're saying on me and take me in."

Q You heard that conversation; is that your testimony?

A Yes, I did.

Q And you say there were about thirty to thirty-five of you in that group?

A Thirty to thirty-five, yes.

Q And how many Haines Pipeline employees did you see?

A Oh, approximately nine, ten.

Q All right. What was the closest you got to the Haines group before law enforcement intervened?

A Just prior to law enforcement intervening?

Q Yes.

A Fifty to sixty feet just prior to the law enforcement coming in.

Q And you knew at that time you were on the pipeline right-of-way itself; isn't that true?

A We knew we were where the work was going on on the pipeline project.

Q And you were at the drill site where the drills were?

A Yes.

Q What was your purpose of being there?

A Putting up informational pickets.

MR. ROBINSON: You may examine.

CROSS-EXAMINATION

BY MR. DUFFY:

Q Larry, what's the geographical area of Local 1334?

A We cover Butte, Bozeman area, which amounts to approximately fourteen counties; Great Falls area; Missoula area; Kalispell area. I can't give you the total number of counties. I think it amounts to somewhere in the neighborhood of two-thirds of the state total area-wise.

Q Questions were asked of you with regard to a pickup truck owned by Local 1334. You drive that vehicle, do you not?

A I am now currently, yes.

Q Do you drive that vehicle on personal business?

A Yes, I do.

Q You are authorized to do that?

A I'm authorized to do so as long as I put gas in it myself.

Q Now, during the period of time when you were in this caravan from Morrell Junction, were there, to your knowledge, police officers or law enforcement officials in company with the caravan?

A Very definitely, yes.

Q What was your position in the caravan?

A Are you speaking of when we went from Morrell Junction to Deer Lodge?

Q That's correct.

A Towards the back end, the last half.

Q Did you see any other vehicles stop or pull off from the caravan from the time it left Morrell Junction until it arrived in Deer Lodge?

A No.

Q Did the officers remain in company with you all the way into Deer Lodge?

A Yes. There was officers up near the front and the middle and the back, and they stayed with us continually.

Q Backing up just a little bit, Mr. Robinson asked you a question about the Montana District Council of Laborers. Does the District Council of Laborers conduct the affairs of Local 1334?

A No, it does not.

Q Is Local 1334 an autonomous organization?

A Yes, it is.

Q Now, was there picketing at various sites along the length of the pipeline, to your knowledge, over the period from July 23rd through August 5th?

A Yes.

Q And characterization seems to be made that two hundred fifty people, or two hundred people or one hundred fifty people were involved. How many people would be involved in these various pickets along the --

A It varied from as few as four or five to -- oh, up to -- I think the largest amount was on the 23rd: approximately two hundred.

Q You were in the courtroom yesterday when Officer Rauch testified; is that correct?

A Yes, I was.

Q Now, when you drove up to that area that Officer Rauch testified about, were you aware that Officer Rauch was in company with your group?

A I wasn't aware that it was Officer Rauch. I was aware there was a police car in company with us.

Q Do you recall how many officers were in the police car?

A Two.

Q How many individuals were in the group that went up to that area?

A Thirty to thirty-five.

Q Now, Officer Rauch testified that the picketers drove through a gate into the area towards the pipeline. Is that substantially what occurred?

A Yes.

Q How far in did the vehicles run?

A From the --

Q From the gate, the first gate.

A From the first gate? I would say a half to three-quarters of a mile.

Q Okay, and what happened at that point, Larry?

A We parked our vehicles on top of a hill and walked down towards where the work was proceeding.

Q At the time you parked your vehicles, was the Haines Construction work site in view?

A Yes, it was.

Q Were the police officers still in company with you at that time?

A I can't say if they were or not. I -- I didn't pay any attention at that particular moment.

Q So you left your vehicles at that point, left them parked at that point; is that correct?

A Yes.

Q And proceeded on foot.

A Yes.

MR. ROBINSON: I'm going to object to the leading questions, Your Honor.

THE COURT: Overruled. I believe his answer's already given. It will stand. Go ahead.

Q (BY MR. DUFFY) Did you, at any time while you were proceeding on foot, see either of the police officers?

A They were there. I can't tell you just exactly what the time frame -- how -- what part of it I was at when they were there, but they were there with us, yes.

Q Now, would you tell us in your own words what you witnessed while you were proceeding down to set up a peaceful picket.

A We were looking down a hill towards the work that was going on. We got within probably ten to fifteen feet of the work, and one of the employees from Haines said -- there was some conversation going on back and forth. One of the employees from Haines threw a rock that almost hit me. And shortly thereafter, within, I'd say, thirty seconds to a minute, they got in their vehicles and drove away from where we were at.

Q Now, was the group of individuals that you were with unruly or rowdy at this time?

A There was yelling going on back and forth between Haines employees and the picketers, yes, especially after the Haines employee threw the rock.

Q You say they got in their vehicles. What happened then?

A They got in their vehicles and drove down along the right-of-way approximately two hundred yards and stopped.

Q They stopped their vehicles at that point?

A Yes.

Q All right. Now, what did your group do at that --

A We were simply standing there. We didn't know if they were going down there to work or what was going on. Officer Rauch came over at that time, and Officer Severs, and was talking to us. And after the Haines employees drove down a hundred fifty to two hundred yards and stopped their vehicles, they got out of their vehicles and all stood together around the vehicles and were yelling and motioning us "Come on down," this type of thing.

Q What did your group do at that time?

A Well, nothing for a couple of minutes, until everybody noticed that they were yelling and calling us, and we started walking down that way.

Q Were the officers in company with you as you walked down?

A They were. I believe they were towards the back. I can't say exactly. They were there with us at the time, though.

Q So you walked down to this place where the Haines employees had relocated themselves. What happened then?

A We got within probably fifty to sixty feet, and a shot was fired.

Q Now, did you see who fired the shot?

A I didn't see the shot fired, no. I seen the guns in one of the hands of the Haines employees immediately after the shot was fired.

Q Did you see any other weapons at that time?

A Yes, I seen a rifle and I seen dynamite. I didn't know at the time that it was dynamite, but it turns out that it was.

Q All right. How did you become aware of this dynamite?

A They threw a stick -- less than a minute after the gun was fired -- we stopped walking, and less than a minute after the gun was fired, an object was thrown from one of the employees of Haines. They were all in a group there. One of the employees threw something.

Q Was the object thrown at your group?

A It was thrown at us, yes.

Q And where did it land in relationship to your group?

A Twenty to twenty-five feet in front of us. It was smoking, and --

Q What was your position with respect to the object that had been thrown?

A It was directly in front of where I was standing.

Q And at what distance?

A Twenty to twenty-five feet.

Q Okay. What happened next?

A When the object hit the group, it smoked and then went off. As Officer Rauch said yesterday, we weren't really sure if it was dynamite or what it was, and the reaction time, we didn't have any before we realized what was going on. The dynamite had gone off.

Q Now, what happened to the crowd after this explosion, or as a result of this explosion?

A I don't understand.

Q Was there any effect on the crowd, anybody hit, injured, or --

A Oh, yes. There was three people that were hit with objects from the dynamite going off that I'm aware of, one including myself.

Q Was there dust or rocks or anything like that going up in the air?

A Yes, there was objects that was blown out when the dynamite went off. I assume they were rocks, and dust and dirt was raised in the area, a considerable amount.

Q Were you knocked down by the explosion?

A I wasn't knocked down. Three or four of us were knocked back a couple, three or four feet from the blast.

Q After the blast and after the dust settled, what is your recollection of what you saw then?

A After the blast and the dust settled, I looked forward, after gaining my balance, and seen one Haines employee leaning over the hood of a truck with a rifle pointed at us. Another had a handgun pointed at us, and two guys standing between them with a stick of dynamite in one hand and something in the other hand. I assumed it was probably a lighter.

Q Now, what happened after you witnessed this, if anything?

A When I looked forward and seen that they were prepared to fire on us or do permanent damage or harm to us, I screamed for somebody to get ahold of the police that was there with us. I was at the point -- when I yelled for that, Officer Rauch came forward. Shortly after that Officer Severs came forward, and I demanded they do something to protect us and take those weapons away from the Haines employees, because we were afraid of our lives.

Q Did Officer Rauch take steps to disarm the Haines employees at that time?

A He was basically in the same type of shape we were, a little disoriented and shocked from what happened, and it did take probably one to two minutes before any action was taken. When Officer Severs got there, I again demanded that they do something, and they said -- asked us to either stay where we were or to move back and they would take care of the problem. And we did, and at that point Officer Rauch stepped forward, drew his revolver out, aimed it in the vicinity of the Haines people, and demanded twice that they put down their weapons immediately.

Q Did you observe this particular event?

A Yes, sir, I did.

Q Did the Haines people cooperate with the officer when he initially asked them?

A They didn't until he said it the second time.

Q And you say he drew his weapon?

A He drew his weapon, yes.

Q Had he asked them to do it before he drew his weapon?

A I believe it was when he drew his weapon. I can't state -- say that for sure.

Q Were the guns pointed in your general direction?

A They were pointed directly at us.

Q Did you witness any arrests on that afternoon in that vicinity?

A Yes. I asked Undersheriff Dick Hauge, when he got to the vicinity --

THE COURT: Let's keep continuity there. How long after Rauch ordered them to put their weapons down? I take it they did on this second command.

A On the second command.

THE COURT: Then how much later than that did the Undersheriff Hauge come back?

A He arrived just within a minute or two after that.

THE COURT: All right, go ahead.

Q (BY MR. DUFFY) Now, do you know of any arrests that were made that afternoon?

A Yes, Haines and -- all of the Haines employees that were there at the site were taken into custody, and I understand there was at least two arrests made as a result of that.

Q When Officer Rauch advised you to stop in your positio while he disarmed the Haines employees, what actions did you take then?

A I told him that -- I guaranteed him that we wouldn't move, that we weren't going to move forward or backwards or nothing until something was done with those employees, because we didn't know what would happen if we did move any direction.

Q Now, you said that there were other injuries sustained by individuals.

A There's two that I know of, yes.

Q Did they see medical experts or doctors?

A Eventually, when the police released us so that we could get them down for medical attention. This was probably an hour to an hour and a half after the incident occurred.

Q Now, when you say the police released you, what do you mean by that?

A Well -- and this is one of the concerns that resulted in Jim Mayes being arrested. We had one or two people that were injured, and we wanted to seek medical attention for them. They were not letting any of us do anything and asked us to stay there until they decided what action they were going to take and find out just what happened. And we stayed there at least an hour, and possibly longer, after the incident before we were allowed to leave and get any kind of medical attention or anything.

Q Did you subsequently see a doctor yourself?

A Yes, sir, I did.

Q Where did you see the doctor?

A I went to St. James' emergency room in Butte.

Q Were you treated at the emergency room?

A Yes, I was there for approximately two and a half hours.

Q And what were you treated for?

A Vertigo. They said basically the same thing as shock; and a number -- a number of x-rays, ten to twelve x-rays on my neck, because of the pain in my neck.

Q Now, did you experience pain during the afternoon of August 5th shortly after the accident?

A Yes, I did, shortly after. Well, I got hit in the knee with some object when the dynamite went off, and my knee was hurting initially. I wasn't aware of anything else being wrong. Everything was so hectic. And as the time wore on, my neck was hurting. I was having problems with my vision, having blurred vision, and so on. It just continued to get worse until I did get to the hospital.

MR. DUFFY: I have no further questions.

THE COURT: Further cross?

MR. HILLEY: May I have just a moment, Your Honor? No cross, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q You've testified that on occasions you've had as few as four or five people picketing.

A Yes.

Q And were there any incidents? Did any incidents occur, any unusual incidents, when you had four or five people picketin on this project?

A No, on several occasions we called the local law enforcement and asked they have somebody available so our people wouldn't be harassed.

Q So that your people wouldn't be harassed?

A Yes.

Q And you got along fine; isn't that true?

A With law enforcement officials there, yes.

Q Now, would you tell the Court from the point when you went through the gate -- by the way, when the caravan approached this gate, did the caravan stop?

A What gate?

Q The first gate out of this Freeze-Out area. You said you came to a gate.

A On August 5th?

Q On August 5th.

A Yes.

Q All right. Did the caravan stop for a period of time?

A For a short time, yes.

Q For what purpose?

A I stopped -- an individual came by as we were going up and said to watch out, that there was tacks or nails or something in the road up ahead. I stopped to find out where they were so I wouldn't receive a flat tire.

Q Was the gate locked at that point?

A I was not up at the gate; I have no way of knowing.

Q You couldn't see the gate?

A I could see the vehicles up at the gate. I couldn't see the gate itself, no.

Q All right. There was a gate there, wasn't there?

A There was a gate, yes.

Q All right. And it was locked or closed; isn't that true?

A I can't say. There was five or six vehicles up there. I never noticed if it was open or closed at that time.

Q And you drove through that gate?

A Yes, I did.

Q And did you notice the condition of the gate?

A If the gate was opened, I never paid any attention to the condition.

Q Did you see an eight-by-eight railroad tie, which served as a post for the gate, that was cut?

A I didn't see it at that time. I noticed it when I was coming out later.

Q You do agree with Officer Rauch that that was the fact, that the tie had been cut?

A It looked as if it had. I couldn't swear to it.

Q Then how far did you drive in your vehicle beyond that gate?

A A half to three-quarters of a mile.

Q And this is agricultural pasture sort of land; is that correct?

A It looked like just normal mountain land to me.

Q Mountain land?

A Yeah.

Q Fences?

A There were fences, yes.

Q Barbed wire fences?

A I can't tell you what kind of fences there were. There was a power line going through the area. I don't know what kind of fences was there. I never paid any attention.

Q And then there was another gate that Officer Rauch testified to. Did you see it, a second gate, or another fence?

A I didn't see any second gate. I seen an opening between the fence. I didn't see any gate there.

Q All right. This was a fence, an interior fence to the first gate and fence; isn't that correct?

A It was -- after we passed through the first one, yes.

Q And that was about a half to three-quarters of a mile from the first gate; is that correct?

A That's what I would say, yes.

Q All right. Did you go through that opening in that fence?

A Yes.

Q And then how far did you drive beyond that?

A Just a short ways.

Q And at that point, then, could you see the Haines Pipeline crew?

A Right, we could.

Q How far were you away from the Haines Pipeline crew at that point?

A From where we parked our vehicles?

Q Yes.

A Oh, a hundred fifty to two hundred yards, I'd say.

Q You testified you did not erect a picket sign at that point; is that correct?

A I did not, no.

Q All right. And you continued walking or running towards the Haines Pipeline group; is that true?

A No, we were slowly walking. There was nobody running.

Q Now, you testified that you got right up to the drilling equipment, where the drilling was going on.

A After they left the area we did, yes.

Q All right. They left the drilling equipment; isn't that true?

A They got on their vehicles and drove down the road.

Q The Haines employees were working on the drilling equipment when you first got there?

A They were there in the general area.

Q Right.

A Around the equipment, yes.

Q Right. And then when they saw you, they got in a vehicle and left; isn't that true?

A Yes, it is.

Q And they went away from you; isn't that true?

A A short distance, yes.

Q And did you see damage done to drilling equipment, air compressors, gauges, and that sort of thing?

A I didn't see damage done, no.

Q Did you see damage done to any Haines vehicles?

A No, I didn't.

Q Broken glass?

A I seen some broken glass. I don't know when it was damaged.

Q What was the broken glass that you saw?

A I just seen glass laying on the ground beside one of the pieces of equipment. I can't remember even which one it was.

Q Beside one of the Haines pieces of equipment, you saw broken glass?

A Yes, when I was coming back up.

Q Isn't it true that part of the members of your group broke glass?

A I cannot say for sure one way or the other, yes or no.

Q Isn't it true that part of the members of your group broke glass out of the pickup truck?

A I can't even recall seeing a pickup truck left there by the equipment. There could have been, but I don't recall seeing it.

Q So how far did the Haines people go away from you in this truck?

A Probably a hundred and fifty yards.

Q And they gathered around a backhoe; is that correct?

A They had their vehicles all there. I seen them by their vehicles. There could have been a backhoe there.

Q There was drilling and dynamiting that was going on in this area. That was what was going on on part of the project; isn't that true?

A I wasn't aware of it until I heard the testimony in court yesterday, yes.

Q Well, you've been around construction long enough to know that where there's a drilling rig, there's usually blasting; isn't that true?

A Depending on the job, yes.

Q How far from the gate, the second gate or entrance in the fence, did you further go before the incident occurred regarding the dynamite?

A Would you restate that? I don't understand what you're saying.

Q I want to know the distance between the second gate you went through, or opening in the fence, as you describe it, and the final incident that occurred with the dynamite.

A And the final incident?

Q Yes.

A The second gate that we went -- second opening that we went through, we parked -- just drove to the top of a hill just fifty yards further -- seventy-five, maybe -- and walked down towards where the work was going on. That was approximately a hundred fifty yards. And when the Haines employees moved further down the road, that was approximately a hundred fifty yards; maybe a little less.

Q So you advanced at least three hundred fifty or four hundred yards beyond that second opening of the gate, and that was about three-quarters of a mile from the first gate; is that correct?

A Half to three-quarters of a mile.

Q Are you aware of any further plans of your union to engage in picketing activity on this construction site?

A It's my understanding the picketing has continued.

Q And will continue; is that correct?

A I don't make those decisions. I can't tell you at this time.

Q Who does make those decisions?

A Various business managers or executive boards of each individual union, as far as whether they'll establish picket lines.

THE COURT: Let's move, counsel.

MR. ROBINSON: I have one last question.

THE COURT: All right.

Q (BY MR. ROBINSON) I want to go back down to the point where you testified, in answer to your own counsel's questions, about a point when you were stopped by Officer Rauch and you had some discussion before the dynamite occurred. Do you recall that?

A Yes.

Q And then you testified that your group advanced further, even after you'd had some discussion with Officer Rauch; isn't that true?

A I didn't personally have discussion with Officer Rauch. Officer Rauch was there and had discussions with some of our people.

Q All right. And the group came to a stop at that point; isn't that true?

A At which point?

Q At the point where you had a discussion -- or the group had a discussion with Officer Rauch.

A Yes, it did.

Q And your testimony is after that discussion, your group continued to go toward the Haines crew; isn't that true?

A After the calling and the chiding by the Haines crew, yes.

Q The calling? What were they calling?

A Just yelling at us in general. There were obscenities involved in it. "Come on down and we'll show you"; this and that. I can't give you any specific conversations that was yelled. There was a lot of people yelling.

Q Were they inviting you tc come down?

A Yes, and waving to us, motioning for us to.

Q These eight or nine people were calling these thirty or thirty-five people to come ahead; is that true?

A That's true.

MR. ROBINSON: That's all I have.

THE COURT: All right. May this witness be excused?

MR. DUFFY: Yes, Your Honor.

MR. McKITTRICK: Yes, Your Honor.

MR. HILLEY: Yes, Your Honor.

THE COURT: Okay, you're excused. You're welcome to stay; you're free to go.

Next witness, please. And let's move along.

MR. ROBINSON: Jim Morley, please.

THE COURT: Be apprised that the other case is coming back on Monday. If you don't finish today, then you're going to be like Tuesday or some other day. So just move it. And if I feel that anybody is not moving -- it's my understanding in England they can try a capital case in a day and a half or two days. I've always wanted to go there and see if that's really true. You know, we couldn't try a default divorce. In fact, in California, how long did it take for that divorce down there, six, eight years, months?

Anyway, raise your right hand.

Thereupon,

JAMES MORLEY,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

THE CLERK: Please be seated in the witness box. State your full name, and spell your last name.

THE WITNESS: James Morley; M-O-R-L-E-Y.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q What city do you reside in?

A 206 Warren, Anaconda, Montana.

Q How long have you been a resident of the State of Montana?

A Almost thirty-five years.

Q How old are you now?

A I'll be thirty-five in November.

Q Are you married, Jim?

A Yes, I'm married and have two kids.

Q Are you employed at the present time?

A I've been employed by Haines Pipeline for three weeks.

Q Prior to that time, were you employed?

A No, sir, I wasn't.

Q How long were you unemployed?

A A year and four months.

Q And what was your last employment prior to Haines Pipeline?

A I worked for the Anaconda Company in Anaconda, Montana.

Q How long did you work for the company?

A For twelve years.

Q Were you a member of any labor organization?

A I was.

Q What labor organization?

A I was a member for the Anaconda Steelworkers Local 6002 for twelve years. I was a union vice-president for eighteen months.

Q And did you participate in collective bargaining negotiations against the Anaconda Company?

A Yes, I did.

Q You're familiar generally with the collective bargaining process?

A Very familiar, sir.

Q Are you represented by any labor organization in your employment with Haines Pipeline?

A No.

Q What is your position? What do you do for Haines at this time?

A I'm a welder's helper. It pays six dollars an hour.

Q Can you tell the Court about anything unusual happenin to you on July 23 as you were coming to work that day?

A Yes. I was --

THE COURT: Which day?

MR. ROBINSON: On July 23.

THE COURT: All right.

A Yes. The morning of July 23rd I was on my way to work, and I come off the Warm Springs road into the frontage road, and in front of the Warm Springs store I happened to see a police car sitting there. And I thought it was an accident. And I happened to look at my watch, and it was 6:24.

Q (BY MR. ROBINSON) 6:24 a.m.?

A Yes, sir.

Q July 23, 1983?

A Yes, sir. And then I seen it, and I seen the people standing around, and I realized I didn't have to stop, so I turned to the right, and I seen approximately two hundred, two hundred fifty men. I was just dumbfounded by all the people there.

Q Was the road blocked?

A Completely. I approached -- I didn't go through the picket line. I approached it, and I was reading a couple of the notices that were there, and I was approached by a fellow about my size, a little stockier. And he was explaining what was going on, and I was listening. And then this big fellow -- I have no idea who he is or anything -- come over to my car and started beating on my car and called me obscene names and --

Q Tell the Court what he said. I'm sure the judge has heard it, so don't be bashful.

A Well, he called me a scab mother-fucker. He told me I was a beggar, which I'm not. I'm a man that needs a job and has a family to take care of.

Q All right. Did he make any threatening gestures?

A He asked me to get out of my car. And I was listening to rocks hit my car, and I looked over, and I saw another guy shooting pellets through my -- hit my windshield. And I got kind of mad, but I didn't get out of the car. I was going -- I figured, when the pellets started hitting the car, it's time for me to go. And I was so scared, I was going to go up the wrong way on the right-of-way. And I turned around, and they were still beating on the car. And I never tried to go through the picket line. I never have, and I never would. I will not, because these union people have hurt my family and my brothers. It's not right.

Q All right. So you got out of there.

A Boy, did I get out of there. I was scared.

Q You indicated you had served in Vietnam.

A Yes.

Q Do you have any comparisons to the fear you had over there?

A It was like the first time I got hit with mortar fire from the night we landed in Vietnam. I was that scared.

Q When you got yourself together, did you survey the damage that had been done to the vehicle?

A Yes. And I went immediately over to a couple of the Anaconda police officers, Sergeant Joe Martelli and Officer Ken Kovacich, and I told them that I wanted to file charges, that I didn't think anybody had a right -- that kind of rights to personally vandalize my own property. If I'd have went through the picket lines, I could see it; I can understand this.

Q What did they say to you?

A They told me that I'd have to wait until I could -- there was nobody to file charges with.

Q When did you report that to these officers?

A About five minutes after it happened.

Q Where were they?

A They were by the Warm Springs sign at the turnoff.

Q How far away were they from this group of people when your car was damaged?

A Approximately, oh, two hundred, three hundred feet.

Q So after the damage, you immediately went over to them; is that correct?

A Yes, I did. I was pissed. Excuse me; I was.

Q And they said that you couldn't file a complaint at that time?

A Yes. They told me I couldn't file a complaint at that time.

Q Was this damage that transpired to your knowledge within the observing area of where these officers were parked?

A They sure should have seen something; that's for darn sure.

Q Tell the Court the kind of damage that your vehicle sustained.

A Well, the paint job probably will cost me four hundred dollars, and the windshield will cost me a hundred fifty to two hundred dollars.

Q Your windshield was destroyed?

A No, it's not completely destroyed. It has pellet holes through it and -- I might as well -- might as well say shot, because it's going to spider and finish the windshield.

Q Any other damage?

A Lots and lots of dents, and the paint's -- rocks -- from rocks chipping the paint and that.

Q You say pellet holes. Did you see any type of weapons that were propelling those pellets?

A Yes. I saw wristrockets, or a slingshot, whichever you want to call it.

Q Are these wristrockets the type of device used by sportsmen to kill --

A Rabbits.

Q -- game animals, rabbits and that sort of thing?

A Yes.

MR. ROBINSON: I have no further questions.

CROSS-EXAMINATION

BY MR. DUFFY:

Q Just a couple questions, Mr. Morley. When the officers told you you couldn't file charges, as I understand your testimony, you couldn't file them at that moment; is that correct?

A At that moment.

Q Did they advise you that you could file them at a later time?

A No, they didn't.

Q Have you talked to the county attorney's office?

A I have.

Q Have you filed charges there?

A I have.

Q So, in essence you have filed charges as a result of this.

A Yes, sir, I have.

Q By going to the county attorney's office and filing charges there; is that correct?

A Yes, sir, I have.

MR. DUFFY: Nothing further.

THE COURT: Other cross?

MR. HILLEY: No cross, Your Honor.

MR. HJORT: No cross.

THE COURT: Redirect?

MR. ROBINSON: Thank you. May this witness be excused, Your Honor?

MR. DUFFY: No problem.

THE COURT: Thank you. We appreciate your testimony. You're free to go; you're welcome to stay.

Next witness, please.

MR. ROBINSON: Dave Morley.

Thereupon,

DAVE MORLEY,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

THE CLERK: Please be seated. State your full name, and spell your last name.

THE WITNESS: Dave Morley; M-O-R-L-E-Y.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q What city in Montana do you reside in, Dave?

A Anaconda.

Q How long have you lived there?

A Twenty-three years.

Q How old are you now?

A Twenty-three.

Q You're a life-long resident of Anaconda; is that correct?

A Yes.

Q Are you married?

A Yes.

Q Do you have any children?

A One.

Q By whom are you employed?

A Haines Pipeline.

Q And what do you do for Haines, Dave?

A Drive truck.

Q Directing your attention to July 23, 1983, where were you working?

A Fourteen miles south of Elliston.

Q All right. Elliston is in Powell County; is that correct?

A Yes.

Q And how far is that from this Morrell Junction area that has been discussed?

A Oh, at least thirty to forty miles.

THE COURT: Is Morrell Junction where the road that goes directly to the town of Anaconda comes into the old road into Warm Springs?

A Yes.

MR. ROBINSON: No, Your Honor. No.

A Well, Morrell's across the highway.

MR. ROBINSON: Morrell Junction is east of the Warm Springs exit on Interstate 90, out towards the foothills of -- right across the Clark Fork River, as I understand it, to the foothills.

THE COURT: But when you want to go directly from Warm Springs to the town of Anaconda, you take this -- that's not it?

MR. ROBINSON: No, that's a totally different area.

A Yeah.

THE COURT: That's different? Tell me where it is again. Maybe I can get my head --

A Thirty to forty miles from Morrell. It's about fourteen miles south of Elliston, where I was at, on the right-of-way.

THE COURT: But Morrell, I still don't know where Morrell is.

A It's across the -- as you go off the interstate to go to Anaconda, instead of going to Warm Springs and taking a right, you take a left and go up the dirt road, an access road, connected to the four corners of which would take you to Morrell.

THE COURT: I think that's what I'm thinking about. Anyway, it doesn't matter much. I do know where Elliston is.

Q (BY MR. ROBINSON) Tell the Court what, if anything, unusual happened to you that morning.

A Well, everything --

Q Approximately what time of the day was it that it happened?

A It was about 9:30 to quarter to 10:00.

Q All right.

A And I was up working, just doing everything the boss told me to do, changing the tire on the truck. And he come up and said, "You better hurry up, because these -- the union guys are coming." He said, "I'm going to go down and get the rest of the crew, and then we'll leave." He said, "You wait up on top of the hill for me." So I sat there and finished changing the tire, and he come up. I put his jack and stuff back in his pickup, and by that time everybody was up from the bottom of the hill, going down the road. And then I saw two motorbikes and a pickup truck coming over the right-of-way, coming over the top of the hill, and then I heard gunshots.

Q Did you hear from what direction the gunshots came?

A Yes, from where them guys were coming from, over the top of the hill on the right-of-way.

Q The gunshots were emanating from the motorbikes and the vehicle?

A Right.

Q Could you tell whether they were coming from the motorbikes or the vehicle?

A No, I couldn't. I couldn't tell where they were coming from. All that I knew is that I saw a handgun on a motorbike, because I could see the silver shining in the sun. It was a chrome-plated handgun.

Q And the rider was shooting over the handlebars?

A Yep.

Q Did you hear or sense any bullets in the area?

A I heard the ricochets in the right-of-way. My pickup was parked off the right-of-way about ten feet.

Q What did you do?

A I got in my pickup and left.

Q Was there, to your knowledge, violence that occurred in that same area involving these motorcyclists that day?

A Not -- there could have been down at Avon, because we -- but, like I say, I didn't stick around. I didn't want to have no problems with nobody. I just wanted to work.

MR. ROBINSON: Thank you. That's all I have.

MR. HILLEY: May we have just a moment?

CROSS-EXAMINATION

BY MR. HILLEY:

Q Mr. Morley, do you know who these people were, though?

A No, I don't. Like I said, we were on one hill, and they were coming over the top of the other, and there was two motorbikes on each side of a pickup.

Q Now, how far would this be?

A Oh, it was at least anywhere from two to three hundred yards away across the draw.

MR. HILLEY: No further questions.

THE COURT: You say you saw a nickel-plated gun shooting over the handlebars of a motorcycle?

A Yes.

THE COURT: What was he shooting at, if anything?

A I couldn't -- like I said, I heard the bullets richochet off the right-of-way.

THE COURT: Okay, you may step down. Thank you. How long is your next witness going to be?

MR. ROBINSON: Very short. Well, relatively short.

THE COURT: All right. Would you call him, please.

MR. ROBINSON: I'd call Hoyt McDaniel.

Thereupon,

HOYT McDANIEL,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

THE CLERK: Please be seated. State your full name, and spell your last name.

THE WITNESS: Hoyt McDaniel; M-C-D-A-N-I-E-L.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q What's your home address, Mr. McDaniel?

A 709 Meadowbrook, Corpus Christi, Texas.

Q Are you employed at the present time?

A Yes, sir.

Q By whom?

A By Haines Pipeline.

Q How old are you?

A I'm forty-seven.

Q And what is your position with Haines?

A I'm heavy equipment operator.

Q What specific piece of equipment do you operate?

A At the time, a backhoe, track backhoe.

Q On August 5th, 1983, did anything unusual happen to you at work?

A Yes, sir. I was a -- I was running a bulldozer, on what we call cleanup.

Q Could you --

A Where we put the right-of-way back.

Q Where were you working?

A About midway between Warm Springs and Deer Lodge.

Q How many miles from the Morrell Junction area were you working, would you estimate?

A I'd say -- the Morrell Junction would be where the warehouse is; is that correct?

Q Yes.

A About six miles north.

Q Six miles north?

A Yes.

Q And it's approximately fourteen miles between Warm Springs and Deer Lodge; is that correct?

A Yes, it is.

Q Tell the Court what happened to you that morning.

A Well, I was -- me and another -- you know, another loader, were working, when a group of, oh, say, twelve, fifteen people came up alongside the right-of-way in a pickup. They were -- the pickup had sideboards, and it was loaded. They parked their truck at the edge of the right-of-way and walked down the right-of-way to where I was sitting.

Q You say the pickup was loaded. Loaded with what?

A With people.

Q All right.

A Well, I would describe it as a herd or something like that, because the cab was full, and the back end was full.

Q Just one pickup --

A One pickup.

Q -- carrying twelve to fifteen people?

A Yes, sir.

Q Is there a fence dividing the road from the right-of-way?

A No, not at that point. There's an access road coming off the county road to the right-of-way, and, you know, there is a fence south of where I was, but not at that point.

Q All right. Tell the Court what happened.

A Well, I -- you know, I kept the tractor down. I waited to see what they wanted or to hear them out. They fanned out around the dozer.

Q Speak up.

A Okay. They fanned out around the dozer and myself and started making threats.

Q What were they saying?

A That I could either leave the state or die.

Q All right. Then what happened?

A One man got up on the tractor, put his hand around my throat, and -- well, he choked me pretty good, enough to black out.

Q You blacked out?

A Yes.

Q Was the equipment running at that point?

A It was idling. It wasn't in gear.

Q All right. So what did you do?

A They let enough pressure off that I could breath, and I asked if they would let me leave: if I'd shut the tractor off, would they let me leave? And they said they would. They let me off of the tractor. I walked around the front. I was struck from behind, knocked to the ground, and kicked.

Q And did you lay on the ground?

A Not very long.

Q Did you try to get up?

A I tried -- I did get up. They let me go then. I walked down the right-of-way.

Q Was anything said to you?

A More threats. I was told to leave three times, that they would kill me if I didn't leave; if I didn't leave the state, not just the job.

Q Did there appear to be anybody that acted as a leader or a spokesman?

A Well no one definite. There were three people, you know, that I can remember that kind of stood out in my memory, you know, as being maybe more verbal than anyone else. But as far as having a leader, I didn't really -- I couldn't say. One man was kind of in the background, I mean, but --

Q Were there any law enforcement people around that day?

A No, there weren't.

Q This was on August 5th; is that correct?

A August 5th, yeah.

Q About what time of the day?

A About 9:00 in the morning, 8:30.

Q And when was the next time that you saw any law enforcement people?

A I saw them escort this group down the county road. There was a police car in front and one behind.

Q When did they escort the group down the road?

A After they had -- they must -- I left. They must have got in their pickup. They followed me down -- another dozer picked me up. They followed us down the right-of-way for a ways, and we went through another gate where we could observe the county road. And we saw the pickup had come up in the middle of this caravan being led by a police car, front and rear. This was about ten or fifteen minutes after the attack on me.

MR. ROBINSON: You may examine.

CROSS-EXAMINATION

BY MR. HILLEY:

Q Mr. McDaniel, are you still working for Haines?

A Yes, sir, I am.

Q And did you talk to any county attorney or somebody to swear out a warrant?

A Yes. I filed a complaint with the county attorney in Deer Lodge.

MR. HILLEY: Thank you.

THE COURT: Further cross?

MR. McKITTRICK: No.

THE COURT: Redirect?

MR. ROBINSON: May this witness be excused, Your Honor?

MR. DUFFY: No objection.

MR. HILLEY: No objection.

THE COURT: You're free to go; you're welcome to stay. We'll recess now, subject to my recall, about five to ten minutes. Make it ten.

(Whereupon, the hearing was held in recess at 10:30 a.m. and subsequently reconvened at 10:45 a.m., and the following proceedings were had and entered of record:)

THE COURT: All right, court is in session. We're ready for your next witness, please.

MR. ROBINSON: I'd call Jim Murry as an adverse witness.

Thereupon,

JAMES W. MURRY,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

THE CLERK: Take a seat. State your full name, and spell your last name.

THE WITNESS: My name is James W. Murry; M-U-R-R-Y.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q Would you state your address, please.

A The -- our office address is 1228 11th Avenue, Helena, Montana. We use a post office box, Post Office Box 1126, and the zip is 59624.

Q What is your personal residence address?

A 8868 Douglas Circle, Helena.

Q And what is your profession or occupation?

A I'm the executive secretary of the Montana State AFL-CIO.

Q Does the Montana State AFL-CIO have a governing board of officers or directors?

A Yes, we have an executive board.

Q Does the board, then, have officers or elect officers?

A Excuse me?

Q Does the board, then, elect officers?

A No, they do not.

Q Could you tell me the names of the individuals on your executive board.

A The president of the Montana State AFL-CIO is Jerry Driscoll, who's also with Local 98 of Laborers; vice-president of our state federation is Nadine Jensen, with the American Federation of State, County, and Municipal Employees; District 1 board member is Ron Lovell, that's also a member of the Aluminum Workers Local 320 in Columbia Falls. The District 2 board member is Bill Potts, who is a member of the Paperworkers Local there. The District 3 board member is Ted Tracy, who is a member of the Machinists Local 88. District 4 board member is Fred Sides, who is with the Ironworkers Local 815 in Great Falls. District 5 board member is James McGarvey, who is with the Montana Federation of Teachers. District 6 board member is Bill Haines, who is with the United Food & Commercial Workers Local 33 in Billings. And then I, too, serve on that board as the executive secretary.

Q And that is the governing board that sets the policy and establishes the policy of the Montana State AFL-CIO; is that correct?

A No, it's not.

Q Is that the governing board of the organization?

A The governing body of the organization is the convention. That is the supreme body.

Q All right.

A The board carries out -- has the responsibility of carrying out the directions and making interim decisions between conventions.

Q The board makes the day-to-day decisions between annual conventions; is that correct?

A The board meets quarterly to make decisions, and then I have administrative responsibilities as the executive officer of the federation.

Q You said Jim McGarvey is a representative of the American Federation of Teachers; is that correct?

A I believe he's the executive director of the Montana Federation of Teachers, which is an affiliation of the American Federation of Teachers.

EXHIBITS:

(Plaintiff's Exhibit No. 19 marked for identification.)

Q (BY MR. ROBINSON) I'm handing you what I'm having marked for identification as Plaintiff's Exhibit 19, and I will hand that to you, Mr. Murry, and ask you if you can identify that document.

A Yes. This is the -- this is the list of names that attended a meeting in Butte at the Copper King on July 26th.

Q Did you attend that meeting?

A Yes, I did. My signature is on it.

MR. ROBINSON: I offer Plaintiff's Exhibit 19.

MR. McKITTRICK: No objection, Your Honor.

MR. DUFFY: No objection, Your Honor.

MR. HILLEY: No objection, Your Honor.

MR. HJORT: No objection.

THE COURT: Without objection, Exhibit 19 is received.

MR. ROBINSON: Thank you.

EXHIBITS:

(Plaintiff's Exhibit No. 19 received in evidence.)

Q (BY MR. ROBINSON) The exhibit is a sign-in list of all the people in attendance at the meeting isn't that correct?

A That's right.

Q Dan Hillard, who represented himself to be of the IUOE in Washington, D.C., attended that meeting; is that correct?

A As I recall, he did.

Q When did you first meet Dan Hillard?

A It was sometime this summer. I can't remember the exact date.

Q And there were a number of other representatives of various unions in Montana at that meeting; is that correct?

A Yes. Yes.

Q What was the interest of the Montana State AFL-CIO at that meeting?

A We had been -- I had requested to be at that meeting, the circumstances that --

Q By whom? Excuse me.

A First by the governor.

Q And were you also requested to be at that meeting by representatives of labor organizations?

A Yes.

Q And a representative of Haines Pipeline Construction Company was at that meeting; is that correct?

A Yes, he was.

MR. ROBINSON: You may examine.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. McKITTRICK:

Q Mr. Murry, is the state AFL-CIO the governing body in the State of Montana of the various labor organizations belonging to the State AFL-CIO?

A No, it is not. The autonomy of each one of those organizations is preserved and guaranteed by virtue of the constitution and bylaws of the organization.

Q And is it also guaranteed by the constitution and bylaws of each of the unions or districts?

A Yes, by virtue of the fact they have their own constitution and bylaws that they adopt within their own organizations. I might add that's also -- that autonomy is also guaranteed by virtue of the National AFL-CIO constitution.

Q Is Local 1334, the Laborers Union, affiliated with the Montana State AFL-CIO?

A No, it is not.

Q How about the Teamsters?

A No, they're not.

Q How about the Operating Engineers 375?

A No, they're not.

Q Do the locals and the district councils govern themselves and elect their own officers?

A Yes, they do.

Q Set their own bylaws and constitution?

A Yes.

Q Discipline their own members?

A Yes.

Q Collect their own fees and dues?

A Yes.

Q Set their own policies and decisions?

A Without question.

Q Does the Montana State AFL-CIO have any duties or responsibilities in representing employees in collective bargaining?

A No. In fact, if we were to do that, it would violate our own rules.

Q And does the State AFL-CIO process any grievances for employees?

A None.

Q You've had occasion to review the complaint on file herein, have you not?

A Yes.

Q Did the Montana State AFL-CIO participate in any of the alleged acts or threats that are set forth in the complaint?

A No.

MR. ROBINSON: I'm going to object, Your Honor, as beyond the scope of the examination.

THE COURT: I'll allow the answer. He's stated no.

A No.

Q (BY MR. McKITTRICK) Did the Montana State AFL-CIO authorize any of their agents or representatives to participate or do any of those alleged acts or threats?

A No.

Q Did they ratify any of those --

A No.

Q -- alleged allegations? Do they condone it?

A No, not at all.

MR. McKITTRICK: No further questions.

THE COURT: Further cross?

MR. HJORK: No cross, Your Honor.

MR. HILLEY: No.

MR. DUFFY: No, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q Mr. Murry, have you ever stated publicly that you do not condone violence and urged union members not to engage in violence?

A Yes.

Q Can you tell us when?

A Well, I've said that -- we've talked about that in some of our meetings with the unions. I've said that in -- I've said that in press interviews.

Q Can you tell me what newspaper articles would contain any public media statement where you've urged union members not to engage in violence?

A The one that -- the one that comes to mind was an interview that was done with a reporter with the Great Falls Tribune, Burt Lendler, and I stated that at that time. That story, for whatever reason, has not appeared yet, if it is going to appear at all. But that was the one -- it was in that interview that the question was asked in greatest detail. And then sometime last week I was asked that question with a radio station in an interview, I believe in Shelby. I think, as I recall, the station is located in Shelby.

Q Have you ever issued any press release to the press urging union members not to engage in violence?

A Well, that's really not our responsibility; that is -- because the activities center around affiliated organizations, and I guess there might be a question of appropriateness for us to do that. However, I guess in my own mind, I would question the necessity of that. It would seem that the important role to play would be with our affiliates, in visiting with officers and with trade unions.

Q Did you --

A We -- let me just respond to that. We don't run our unions through the press. The unions are administered, and we as leaders respond to the needs of those members in meetings.

Q Isn't it true that you use the press and press interviews as a means of communicating to union members generally in Montana?

A Probably not very well. We do --

Q You try to; isn't that true?

A We respond to the press, and we make press statements, yes.

Q Do you recall being quoted in the press of a speech you gave down in the southwestern Montana area to the effect that you would put fifty thousand miles on your car this summer if necessary to engage in picketing activity?

A The only reference that I saw to that statement was originally in the Lee newspapers, and the statement was attributed to me by a representative of the Montana Power Company, and that was a lie.

Q You did not make that statement?

A The representative of the Montana Power Company was not telling the truth.

Q Did you make that statement?

A I did not.

Q Did you make any statement that you would put miles on your car to assist labor organizations in connection with union matters this summer in Montana?

A Well, I'm sure I've said that, becuase that's what I do for a living. I drive around the state, and I have a responsibility to represent, to the very best of my ability, the interests of the trade union movement. The comment that was attributed to me was not something that I was -- that I might not have said; it's just that I didn't make the statement. I did not make that statement. The meeting that the statement was attributed to me was at a graduation exercise for the Surface Mining Institute that the Western Energy, a subsidiary of the Montana Power Company, has an interest in. The Operating Engineers administer that program, and we try to help and assist. It's to train new and young workers. And so it was a graduation speech and would have -- it had nothing to do with -- it had nothing to do with the problems relating to this case.

Q Is Operating Engineers Local 400 a constituent member of the AFL-CIO?

A Operating Engineers?

Q Local 400.

MR. McKITTRICK: I'm going to object. I don't know what "constituent" means.

MR. ROBINSON: Well, let the witness --

THE COURT: State your question.

Q (BY MR. ROBINSON) The question is, is the Operating Engineers Local 400 a constituent member of the AFL-CIO?

A They're affiliated with the Montana -- an autonomous union affiliated with the Montana State AFL-CIO.

Q Do they pay financial support to your organization?

A They pay per capita taxes to the state federation.

Q Would you tell what the per capita tax is.

A They pay sixty-two cents per member per month.

Q And is that assessed to the member?

A I don't know how the Operating Engineers do that. That would depend on their constitution and bylaws.

Q Is Local 294 of the Laborers Union in Billings an affiliate member?

A Local 294 in Billings?

Q The Laborers Union that Mr. Driscoll's affiliated with. I may not have the number correct.

MR. McKITTRICK: Your Honor, I fail to see that's relevant. That local in Billings, as I understand it, was 98 and has not been named as a defendant.

Q (BY MR. ROBINSON) I'm sorry if I misspoke myself. What is the number of the Laborers Union in Billings with which Mr. Driscoll's affiliated?

THE COURT: If you know.

A Local 98.

Q (BY MR. ROBINSON) All right. Is Local 98 of the Laborers Union an affiliate member of the State AFL-CIO?

A Yes, it is.

Q Is the American Federation of Teachers an affiliate member of the Montana State AFL-CIO?

A We have a number of AFT locals that are affiliated with the Montana State AFL-CIO.

Q Do you know a Maurice McCaughey?

A Yes, I do.

Q And he ran for the presidency of the Montana State AFL-CIO; isn't that correct?

MR. McKITTRICK: I'm going to object as irrelevant.

THE COURT: Overruled. Go ahead.

A Yes, he did.

Q (BY MR. ROBINSON) All right. And is he presently on your governing board?

A No, he's not.

Q Has he ever been?

A He was for a short time, yes.

Q And what is his occupation?

A I don't know for sure. I believe he's a retired police officer. To my knowledge he is now retired.

Q Just recently retired; isn't that correct?

A As far as I know.

Q And was, for a good number of years, a police officer with the City of Butte?

A Yes.

Q Mr. Murry, have you ever, in the last month, three weeks, have you counseled officers of unions which are affiliated with your organization to prevent violence and acts of vandalism on picketing lines in the State of Montana and the Haines Pipeline project?

MR. McKITTRICK: Objection; irrelevant.

THE COURT: I'm going to allow the answer. I believe that's probably true; the objection is well taken. Go ahead and answer.

A We've -- I've talked about the purported incidents a number of times, and we've talked about -- we've talked about how the purported violence was not helping the labor movement in Montana. I not only made that point in those discussions a number of times, but with any of the people that I've talked to, there has not been any disagreement with that point at all. Every trade unionist that I've -- every trade union leader that I have talked with has agreed that it's a bad thing, it's not in the best interests of the labor movement, and that they didn't have anything to do with it.

Q (BY MR. ROBINSON) Did you take any affirmative steps to take action to prevent people involved in picketing from carrying weapons while they're picketing?

MR. McKITTRICK: Objection again.

THE COURT: Yes, that's so conclusionary. Strike it.

Q (BY MR. ROBINSON) Okay. Have you taken any affirmative action to prevent picketers from carrying pipes or baseball bats or objects of that nature?

MR. McKITTRICK: Again, Your Honor, objection.

THE COURT: Sustained. That's conclusionary. That's argumentative in its form.

Q (BY MR. ROBINSON) Have you taken any steps or made any efforts to control consumption of alcoholic beverages during these activities?

MR. McKITTRICK: Again, objection.

THE COURT: Sustained.

Q (BY MR. ROBINSON) Would you agree that the use of alcoholic beverages on picket lines might be inappropriate?

MR. McKITTRICK: Again, objection.

THE COURT: Sustained. The objection is well taken. I'll let the witness answer, for whatever difference it makes. Go ahead.

MR. ROBINSON: May I ask on what basis the objection is made, please.

MR. McKITTRICK: It's speculative. His own personal opinion of consuming alcoholic beverages has no import. It has no foundation or basis.

THE COURT: I sustain that, but you may answer if you choose.

MR. ROBINSON: If my objection's been sustained, then I have no further questions.

THE COURT: All right. Very well.

MR. McKITTRICK: No questions.

THE COURT: Any additional?

MR. DUFFY: No questions.

MR. HILLEY: No questions.

THE COURT: May the witness be excused?

MR. DUFFY: No objection.

MR. HILLEY: No objection.

THE COURT: Thank you. You may step down. If you're here by way of subpoena, you may be excused. You may stay; you're free to go.

MR. ROBINSON: The witness was not subpoenaed.

THE COURT: Very well. You're free to stay or to go.

MR. BUXBAUM: The Plaintiff at this time calls Doug Haines.

Thereupon,

DOUGLAS ALLEN HAINES,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

THE CLERK: Please take a seat. State your full name, and spell your last name.

THE WITNESS: Douglas Allen Haines; H-A-I-N-E-S.

DIRECT EXAMINATION

BY MR. BUXBAUM:

Q Mr. Haines, where are you currently living?

A In Helena.

Q Where is your permanent address?

A 1411 21st Street, Woodward, Oklahoma.

Q What is your occupation?

A I'm field office manager for Haines Pipeline.

Q Would you tell the Court a little bit what is involved in the title field office manager.

A I take care of all the accounting procedures, bookkeeping, payroll, costing, and progress.

Q Do you also have an employment relations function in the sense employees report to you and you to them as to company policy and so on?

A Yes.

Q How long have you been in Montana?

A Since about June the 10th.

Q 1983?

A Yes.

Q What brings you to Montana?

A The construction of a two hundred mile sixteen-inch pipeline for Montana Power.

Q Was Haines Pipeline a successful bidder for that project?

A Yes, they were.

Q And is it under contractual obligation to build it for the Montana Power Company?

A Yes.

Q In connection with your title as field office manager, do you maintain an office near the site of your construction projects generally?

A Yes.

Q When you came to Montana, did you open an office near the site itself?

A Yes.

Q Where was that?

A At Morrell Junction, near Warm Springs.

Q Is your office still located there?

A No.

Q Where is it now located?

A In Helena.

Q When was your office moved?

A It was moved on July the 23rd, 1983.

Q Now, taking you back to July 23, 1983, do you recall anything unusual or extraordinary when you went to the office that day?

A Yes.

Q Would you tell the Court what time of day you went to work that day.

A I went to work at 6:00, at a.m.

Q When you arrived to go to the office, were you encountered by a group of people?

A Yes.

Q Would you describe for the Court what you saw.

A Okay. When I was coming from Deer Lodge on Interstate 90 and exited off onto the Warm Springs exit and turned to my left to go underneath the overpass -- and whenever I turned to my left, I noticed that there was a large group of people standing across the road with signs, and realized that we had a picket. So I drove up within about a hundred feet of this crowd of people and stopped, deciding whether to go ahead and go on across them or to turn and leave.

Q Okay. Before we get to what you did next, in connection with these signs, do you recall what the words on the signs said?

A I noticed a couple of the signs. There was quite a few. Two of them that I noticed in the length of time I was there, one of them said, "Scabs go home," and another one said -- had some lettering on it, and at the bottom was bigger lettering, identifying the Operators Union.

Q If you don't remember the precise words on the signs, what impression did they convey to you? What mental impression did you form by what those signs were attempting to convey?

MR. McKITTRICK: Objection.

THE COURT: Overruled.

A For the one that said "Scabs, go home," that they didn't want us nowhere around and they wanted us to go back to Oklahoma.

Q (BY MR. BUXBAUM) And as to the ones that were marked IUOE or other designations, what did that impress upon you?

A It just impressed upon me there was people there representing those unions.

Q Now, after you stopped and were deciding whether you were going to drive through this group of people or seek another means of access, what did you do?

A Well, at that time -- I have crossed -- I've been on jobs before where we've had small pickets, and I've been able to drive across them. They've all moved to the side. They've been organized and never had any trouble. This one, in the time that I was trying to decide whether to proceed through or what to do for sure, within just a matter of seconds the mob started moving towards me, just yelling things and, you know waving their signs and stuff.

Q What did you do?

A I immediately exited back up onto the interstate.

Q Now, when you arrived, and during this period of time, were there any law enforcement personnel present?

A When I arrived, I saw one law enforcement car that was parked over by the Warm Springs store.

Q How far away from this group of people?

A I would say probably five hundred feet.

Q Were there law enforcement officers present?

A The only one I saw was one person in the car.

Q There was one person in the car?

A Uh-huh.

Q Were there any law enforcement people present near the site of this group of people?

A Not to my knowledge.

Q Had anyone advised the group to remove themselves from the road and allow you to get access to your office?

A No, they did not.

Q Now, when you arrived there that morning at 6:00 a.m. and were confronted by this group of people, had you had any advance knowledge or warning in any respects that this is what would greet you that morning?

A I had a warning at 5:30 in the morning that there was going to be some people out there picketing.

Q This was 5:30 that same morning?

A Yes.

Q A half hour earlier?

A Yes.

Q How did you obtain that warning?

A My night security man from my office at Morrell Junction called me.

Q Prior to that time, did you have any knowledge or information that you would be confronted with this group of picketers?

A No.

Q How many people would you estimate were in that crowd?

A I'd say anywhere from a hundred fifty to two hundred.

Q Was there a bus present?

A Yes, there was.

Q Do you recall what the name of the bus lines was?

A Yes. It was a blue and white bus, and the letter on it said Big Sky Bus Lines.

Q Were you able to identify the bus or get a license plate number?

A No, I was not.

Q After you left the scene of this group, where did you go?

A I went back up to the Galen exit, which is about four miles from the Warm Springs exit, and went into the office the back way.

Q After you got to the office, was that the end of the picketing that day?

A No, it was not.

Q Could you tell the Court what transpired while you were at the office that morning.

A About 7:00, after all the employees had more or less showed up and I had to go around the back way to the office, I looked out my office window, back down towards the interstate. I could not see the crowd, but I looked back down towards that way and noticed that there was a lot of cars coming up the road towards the office. They was probably a quarter of a mile from the office at that time. They just -- more of them kept coming, and more of them kept coming.

Q Let me back up just a moment. This site at Morrell Junction, was this the primary access point for your employees --

A Yes.

Q -- to the job site?

A Yes.

Q And how long had that been the case?

A Since June the 15th.

Q So for over a month your employees had been entering on the Morrell Junction site?

A Yes.

Q That is by July 23, 1983.

A Yes.

Q So let's go forward in time again. You're in your office. Was there violence or any acts of violence near the office that you witnessed or observed?

A On July 23rd?

Q Yes.

A Yes. Whenever the cars all pulled up, they parked away from the office, probably three hundred feet. All of them exited from their cars, started walking down the road and walking out into our yard, where we had some equipment parked.

Q Now, by this time were there any more law enforcement people present than you have earlier seen?

A No, there was not.

Q Now, between the time that you arrived at 6:00 a.m. and the time that this group began to advance on your office area, had you attempted to notify any local authorities?

A Yes.

Q Could you tell the Court who you attempted to notify and what you told them.

A I had my night security man, whenever -- earlier that morning, call in and call the sheriff's department and have them be on alert. And after I had gotten to the office, I called the Butte Highway Department, Highway Patrol Department.

Q Had anyone, before this group advanced on your office, responded to your calls or warnings?

A No, they had not.

Q Now, would you tell us what sort of acts of violence or acts of property damage you witnessed in the area of the office.

A Well, whenever the crowd of people started moving out into the yard, I witnessed them picking up rocks and throwing them at vehicles that belonged to our employees, as they were trying to leave the yard, going to work. I also -- they were -- one of them come over to my base station. We had a company pickup parked out in the yard with a radio in it, and one of them had gotten into the pickup and come over to my base station, which is in my office, and said, "Scabs, go home."

Q Now, in connection with the yard, whose property was your yard on?

A Montana Power Company.

Q It was private property?

A Yes, it was.

Q Now, had the police that were present sought to restrain the crowd, that you could observe, from entering this private property?

A No, they did not.

Q Did anyone take any efforts to prevent them from throwing rocks?

A No, they did not.

Q So your employees, some of them, attempted to go to work that day?

A Yes.

Q How long were your employees able to remain on the job that day?

A I would say somewhere in the neighborhood of thirty to forty-five minutes.

Q Where were your crews at that time?

A They were down the road north of my office, anywhere from one mile to ten miles.

Q So it was spread out over --

A Yes, it was.

Q -- a considerable distance. How long did you yourself remain at your office that day?

A I remained there until around 4:00 in the afternoon.

Q What time did the rest of the employees leave?

A They all left around -- most of them left around 7:00, because that's the time we go to work.

Q So you remained at the office, and most of the employees left?

A Yes.

Q Now, was that pursuant to your order, or was that on their own advice, so to speak?

A That was -- you mean -- I don't understand your question.

Q Your employees leaving the job.

A Well, we told them, you know, we wanted to go to work, and they knew they had to be at work at 7:00.

Q But they ultimately left the job that day?

A Yes.

Q And I want you to tell me why.

A Because we had told them to leave after violence broke out.

Q Now, after violence broke out, was there a time when more police ultimately arrived?

A Yes, after the crowd left the office and moved north on -- down the road that run right along our right-of-way, there was four police cars that showed up at the office.

Q What actions did those police take to control this crowd?

A Well, there was no one left at the office, and when the patrol cars got there, what I witnessed was them getting out of their cars, opening their trunks, and pulling their guns out and going back into their cars and going north down the road.

Q Was that the last you saw of them?

A Yes.

Q Now, during the day, were you in radio contact or other kind of contact with certain of your employees along the line?

A Yes, I'm always in radio contact with all of my foremens (sic).

Q Were you receiving reports up and down the line as to what was transpiring away from the office?

A Yes.

Q And what were you being advised?

A It was being reported in to me that the people, the mob, had --

MR. DUFFY: Motion to strike the word "mob," Your Honor.

MR. BUXBAUM: Your Honor, that's this witness's characterization.

THE COURT: Don't argue. The objection is overruled.

A I had reports that the mob had went -- had advanced out onto our right-of-way, was breaking windows in our maintainer and slashing our tires on our maintainer. I had a report come in from taping foremen that they had gotten onto one of our dozers and started it and put it in gear and turned it loose by itself. I had reports that they were heading -- had went through the gate on Freeze-Out Hill and were heading up there to our stringing crew; and I also had an inspector from the Montana Power Company come by my office, which he's the chief inspector, and he said that one of his inspectors had just called him on the radio and said that the mob of people was heading up Freeze-Out Hill, heading for the stringing crew and the ditching crew, and wanted to know if he could call up there and tell his inspector to tell our people to leave. And I said yes.

Q So you did not seek to have your crews remain on the job in the midst of this violence on that particular day?

A No, I did not.

Q What was your thinking there?

A The thinking was that we didn't want anybody getting hurt. It wasn't worth having our people stay out there and maybe somebody getting hurt over all this.

Q Based on what you observed from this mob, was it your impression that if your crews came into contact with this mob, someone would get hurt?

A Very much so.

Q Now, later in the day, did you receive reports from certain of your employees that they were being threatened at their personal residences and things of that nature?

A Yes, I did.

Q Could you tell the Court the nature of those reports.

A We have several men who were staying at the KOA Campground in Deer Lodge, Montana, and they called me several times during the day, told me that a group of people had been coming by there and telling them if they did not --

MR. McKITTRICK: Objection, Your Honor; hearsay.

THE COURT: I'll allow it. Go ahead.

A If they did not leave the campground by that evening, or by dark, that these people would be back and they would burn their trailer houses, which they were living in at the time, to the ground.

Q (BY MR. BUXBAUM) Were there any other similar reports that you received that day?

A I received reports from women who are staying -- were staying at the Big Sky Motel in Deer Lodge that were the wives of some of our employees and some of our foremens (sic) about the harassment that they were -- the people had moved into Deer Lodge, and about the vulgar things that these men were saying outside the motel room to the women.

Q Now, did there come a time during the day that your own personal family became implicated in this story?

A Yes.

Q Would you tell the Court about that.

A At 1:00 in the afternoon I was at the Warm Springs-Morrell Junction office. The -- a policeman from the Anaconda Police Department, sheriff's department, come by and said that he had heard a rumor that at the next morning there was going to be six hundred people there doing the same thing that they had did that morning. He told me that if I had any brains in my head that I would pack everything I had in that office, including my computer, and go get my family, which was in Deer Lodge, and get the hell out of there.

Q And did you take his advice?

A I sure did.

Q Now, did you travel to Deer Lodge to get your family yourself?

A No, I did not.

Q Why is that?

A Because the -- we had asked, when we -- when he told us this, we had asked where would be a safe place for us to go.

They told us they really couldn't tell us. They felt like Helena would be a safer place than anywhere, because there was more law enforcement.

Q Now, when you talk about "they," are you talking about the law enforcement officers for the counties of Powell and Deer Lodge?

A Yes.

Q They could not tell you where they thought it would be safe for you?

A No.

Q They ultimately told you they thought you ought to go to Helena?

A Right.

Q Now, did you go to Deer Lodge to retrieve your family?

A No, I did not. It was advised to me not to go into the town of Deer Lodge. They told us they would give us a police escort to Helena, but that I was not to go into Deer Lodge and pick up my family.

Q Was your family ultimately given a police escort to Helena?

A They were picked up by the sheriff or one of his deputies from the police department in Deer Lodge and transported and relocated with myself at McDonald Pass.

Q Is that, to your knowledge, the county boundary between Powell and Lewis & Clark counties?

A Yes, it is.

Q So you were escorted to the county line and dropped off?

A Yes.

Q Now, was there anybody from Lewis & Clark County there that met you?

A They met us about two -- we went ahead and proceeded on down the mountain, and they met us about two miles. They had told us that they would come and escort us into Helena if we would take responsibility for any damages that might happen to their police cars.

Q Did you accept that responsibility?

A I sure did.

Q And you were ultimately escorted to Helena?

A Yes.

Q Have you been living in a motel in Helena with your family since that time?

A Yes.

Q Now, on July 23, 1983, Mr. Haines, was your company, which was building this pipeline about which we've heard so much, signatory to any collective bargaining agreement with any labor organization or union?

A No.

Q Now, after July 23, 1983 and between July 23, 1983 and August 5, '83, what was the nature of the acts that were transpiring on the picket line with respect to union activities or picketing activities?

A What had transpired was there was pickets on the lines every day, a little harassment being taken from -- our employees were being harassed, not only whenever they went by these picket lines, but they also were being harassed during the nighttime hours. There was reports that they personally themselves had told me.

Q Now, in between the time of July 23 and August 5, 1983, did you have any employees who left your employment?

A Yes.

Q A substantial number?

A Quite a few.

Q Now, did they ever call you and tell you why?

A Yes.

Q What were they telling you?

MR. DUFFY: Objection, Your Honor; hearsay.

THE COURT: I'll allow it. Go ahead.

A They were telling me they were leaving. A lot of them left because they were absolutely scared for their lives. They didn't feel like they could risk getting on a piece of machinery and operating it knowing they had to be looking behind their back every minute for fear somebody might be coming up behind them.

Q (BY MR. BUXBAUM) Now, after July 23, was a decision made to discontinue operation on the line for a period of time?

A Yes.

Q And how long did you remain down, so to speak?

A Nine days.

Q Nine days?

A Yes.

Q At the time that the picketing commenced on -- or whatever we call the incidents on July 23 -- were you working seven-day weeks?

A Yes.

Q Why is that?

A Because we knew that we have a long ways to go, and we was trying to get the job done before the weather got to us.

Q Is this the best part of the year for the purposes of laying pipeline?

A Yes.

Q Why is that?

A Because it's during the summer months. You don't have any freezing going on, and your ground is always able to dig the dirt.

Q Between July 23 and August 4, 1983, did any representative of any labor organization contact you for any purpose?

A No.

Q Between that time, did anybody make any requests or demands on Haines Pipeline to allow any votes among Haines's employees to determine whether they wanted to be in any union?

A No.

Q So directing your attention, then, to August 4, 1983, which I'll represent to you was last Thursday, do you recall receiving information during the day of rumors about another large group of picketers arriving the next day?

A Yes.

Q From whom did you obtain that information?

A The first information come to me from my security man that was located in my Morrell Junction office. The sheriff's department of Anaconda had personally come by and told him.

Q Now, in connection with that rumor which came from, I guess, the law enforcement personnel to your employee, did you make some business decisions about how you might react to this problem if it once again presented itself?

A Yes.

Q Could you tell the Court what basically you decided to do.

A Well, the first thing we did -- well, the first thing I personally did was get in contact, since I was in the Lewis & Clark County, with Captain Bill Flyner of the sheriff's department, and we met and discussed about what might happen the next day. We also got in contact with all of our foremens (sic) and told them to have all of their employees just go straight to work that morning.

Q That is, go directly to where their crews were instead of gathering at a certain point?

A Yes.

Q And why was the reason for that?

A Because gathering at one point would -- if we were going to have a large mob of people waiting at us -- if all our employees gather at one point, it would cause a lot of distraction, and we wouldn't get to work on time.

Q Were there any instructions given to your foremen about instructing the employees how to respond in the event of a problem that following day?

A Yes, there sure was.

Q Could you tell the Court what your employees were instructed.

A We told our employees that the number one thing we wanted to get across to them is we did not want any violence to break out. We did not want to do anything first. We didn't want to aggravate anybody. "Just go to work and do your job the best you can, and don't be aggravating anybody else."

Q Were they told to try to avoid confrontations with large groups of people and things of that nature?

A Yes.

Q Now, on August 5, 1983, you were, I take it, in Lewis & Clark County.

A Yes.

Q And you were again in direct contact with your foreman on the site?

A Yes.

Q Now, when was the first report -- or did you receive a report that morning of an accumulation of people?

A Yes. We had a -- we had went ahead and started a man that was working for us who had his airplane up here flying the line for us. He had been up since about 5:30 that morning, reported back around 6:30 that there was no trouble as of yet.

Q Were there people present?

A What?

Q Were there a large group of picketers present?

A Not to my knowledge, no.

Q All right.

A Around 7:00 we got a call back from him. He said he had spotted some activity going on.

Q What did he tell you?

A He just said it looked like most of the activity was occurring around the cleanup and tie-in, taping crew, and up around the ditching and blasting crew.

Q That would be at the Freeze-Out area?

A Yes.

Q Now, prior to August 5, you mentioned you contacted Sheriff Flyner. Did you engage in any other efforts to contact local law enforcement personnel and request assistance?

A Yes. All the Deer Lodge and Anaconda both were notified, and they had already received a teletype saying -- from the sheriff -- or from wherever, the Colstrip area over in the eastern part of the state -- that there might possibly be some people heading this way.

Q So they knew what you were telling them.

A Yes.

Q Did you request that they make certain they had adequate personnel there the following day to protect your employees and equipment?

A Yes.

Q What did they tell you?

A They told us that, you know, they would do the best they could do, but they weren't large enough for us to handle a crowd like that showed up the last time.

Q And the crowd that showed up the last time was how large did you estimate?

A I estimated between a hundred fifty to two hundred.

Q So on August 5 you began to receive reports of trouble along the line from this airplane observation --

A Yes.

Q -- person? Did you continue to receive reports of any damages to equipment or anything of that nature?

A Yes.

Q Okay. And that went on for how long during the course of the day?

A I'd say it went on probably for three to four hours.

Q Now, after the conclusion of these reports and the conclusion of this violence on the 5th that you described, could you tell the Court what kind of damage was caused to the property of Haines Construction.

A Well, there was some gauges and windows and stuff like this that were busted up on the blasting crew. Our stringing trucks, which we had five stringing trucks, had the windows busted in them, the mirrors shattered; and we had one dozer that had a shot through the radiator and a shot through the exhaust manifold.

Q Were there any other damages?

A Not to my knowledge.

Q Were there any incidents of any of your employees having acts of physical violence perpetrated against them?

A Yes.

Q And that was reported back to you as well?

A Yes.

Q Now, since August 5, 1983, have you had further incidents of employees leaving your employment?

A Yes.

Q Are they giving you the same reasons now as they gave you before?

A Yes.

Q And what was that?

A They're giving the same reasons that these people are -- a lot of them are from the Deer Lodge area, are saying that they're just being visited during the nighttime hours or they're being visited maybe while they go to the grocery store, and they just can't take it any longer. They're either being told to quit working for Haines Pipeline or else trouble's going to happen.

Q Now, I'd like to draw your attention to an employee of yours by the name of Rex Sneed. Do you remember that fellow?

A Yes.

Q Was Rex Sneed in your employ on the pipeline project?

A Yes.

Q What was his job?

A He was our right-of-way foreman.

Q Is Rex Sneed still in your employ?

A No, he is not.

Q Can you tell the Court the circumstances under which Rex Sneed left your employ.

A Rex Sneed was staying at a motel in Helena after the first riot had happened and was visited one night by a Mr. Dan Hillard and three other persons which he did not know.

MR. McKITTRICK: Your Honor, I'm going to object to this unless it's first-hand knowledge.

THE COURT: I'm going to allow it. Go ahead.

A He was personally threatened by Mr. Hillard that if he did not quit working for Haines Pipeline that harm would come to property or to himself or to his family.

Q (BY MR. BUXBAUM) Now, had Mr. Sneed, either before that or at some subsequent time, been contacted by the National Labor Relations Board about providing testimony on this matter?

A Yes, he had.

Q Had he left prior to the time he was so contacted?

A He was still working for us when he was contacted, but before he went over to give it, he left during that period.

Q When precisely did Mr. Sneed leave your employ?

A I believe it was last Sunday night.

Q Was that the night before he was to provide testimony for the NLRB?

A Yes. Yes.

MR. BUXBAUM: You may inquire.

I'm sorry, Your Honor; may I have a moment? We still have two photographs we've never moved admission on.

Q (BY MR. BUXBAUM) Mr. Haines, I'm handing you what has previously been identified as Plaintiff's Exhibit Number 4. I would like you to tell the Court what that photograph depicts.

A That photograph is a picture of the exact situation that I faced on August the -- I mean on July 23rd, 1983 when I was attempting to go to work.

A Now, this picture portrays, does it not, a group of people, some of whom are carrying signs, and they appear to have the road blocked.

A Yes, they did have the road blocked.

Q Now, was it necessary for your people to transport themselves through that group of people to get to your office and go to work?

A Yes, it was.

Q I'm handing you what has previously been identified as Plaintiff's Exhibit Number 5. I would like you to tell the Court what that depicts.

A This is the same picture, a little different angle. It also shows the exit which I first came off of the interstate and turned facing the crowd of people that was across the road.

Q And that was, again, as it appeared July 23, 1983?

A Yes.

Q At about 6:00 a.m.

A Yes.

MR. BUXBAUM: I move admission of Plaintiff's Exhibits 4 and 5, Your Honor.

EXAMINATION

BY THE COURT:

Q I might inquire did you take those two pictures yourself?

A Yes, I did.

Q At that time?

A Yes.

Q All right. What kind of a camera do you have?

A It's just a little Kodak Instamatic camera.

Q Does it develop at that time?

A No, it does not. You have to have the pictures developed.

Q Okay, but the two pictures do depict what you saw at that time?

A Yes.

Q What time of the morning was it?

A It was around 6:00 a.m., 6:15; somewhere in that general area.

Q But it was fully light out?

A The sun was coming up, yes.

Q I notice they're a little underexposed.

A I'm sorry.

Q That wasn't because it was dark?

A Yeah. Yeah.

Q It was just your craftsmanship.

A Yeah.

THE COURT: Any objection?

MR. HILLEY: No objection.

MR. DUFFY: No objection.

THE COURT: All right, they'll be received, 4 and 5.

EXHIBITS:

(Plaintiff's Exhibit Nos. 4 and 5 received in evidence.)

MR. BUXBAUM: I have one further question, Your Honor.

DIRECT EXAMINATION (Resumed)

BY MR. BUXBAUM:

Q Mr. Haines, on the morning of August 5, 1983 when you were receiving reports, did you receive reports of a bus being present?

A Yes.

Q And did someone tell you that there was a label or sign on the bus?

A Yes, they did.

Q What was that?

A It said "Union Express."

Q Did you subsequently, that day, in the City of Helena, near Jorgenson's Cafe, photograph that bus?

A Yes, I did.

Q At least a bus that had the sign "Union Express" on it?

A Yes. I went to First Security Bank to cash a check, and right across the street, I believe it is Jorgen's -- or something like that -- Cafe, and there was a bus there with "Union Express" on the side of it. And it caught my attention, because there were several patrol cars around the bus.

Q And that was near Jorgenson's Cafe?

A Yes.

Q Now, I'm handing you what has been previously identified and admitted as Plaintiff's Exhibit Number 20. Is that another photograph you took of that bus?

A Yes, it is.

Q And would you read for the Court what the side of the bus says.

A It says, "Call Ed Moss, 252-3524."

Q This was the same bus with the "Union Express" sign on it?

A Yes, it was.

Q Handing you what has been previously identified and admitted as Plaintiff's Exhibit 21, is that another photograph of this bus?

A Yes.

Q And it clearly bears the sign "Union Express," does it not?

A Yes, and it also shows a patrol car behind it.

MR. BUXBAUM: You may inquire.

THE COURT: Are we ready for cross?

CROSS-EXAMINATION

BY MR. DUFFY:

Q Mr. Haines, you made reference to security guards at Morrell. On the date of July 23rd, 1983, were there security guards present at Morrell Junction?

A There was one security guard.

Q Was that security guard armed?

A Yes, he was.

Q And what was he armed with?

A Some kind of a pistol he carried in his side pocket. I don't know exactly. He's licensed to carry it.

Q On August 5th, were there security guards at Morrell Junction office?

A Yes.

Q And were those guards armed?

A One guard was armed, the same man.

Q There have been reports in the newspapers relative to statements made about these guards being armed with machine guns or automatic weapons.

A We're talking about different people besides this man that I'm talking about.

Q Do your guards have those types of machine guns?

A They do not have machine guns.

Q Have they ever had?

A No, they haven't.

Q Automatic weapons?

A They have had weapons that you have to pull the trigger one time and it fires one shot.

Q An automatic weapon?

A Yes.

Q Now --

THE COURT: Well, let's be clear. I don't know the difference, but you're talking semiautomatic; he said automatic;

and you said yes. Do you know what an automatic --

A Well, to me an automatic would be if you pull the trigger and it kept firing. Am I not correct?

THE COURT: This, though, you say you pull the trigger?

A You pull the trigger once, and it fires once.

THE COURT: If you hold the trigger down --

A It does not fire.

Q (BY MR. DUFFY) Have you been advised or received any first-hand knowledge that your employees, nonsecurity employees, are carrying firearms?

A I'm sure that some of them are. I do not know that for sure.

Q Have you issued any directive prohibiting this type of activity?

A No, I have not.

Q Have you been advised that those employees were in fact carrying guns on your job site?

A I do not know that.

Q Were you advised that on August 5th, 1983 law enforcement officers confiscated guns from your employees at Freeze-Out?

A The only one that I know about was one gun that was taken away from a man that was supposedly supposed to have fired a shot.

Q And you have not issued any directives to your employees not to carry firearms on the job site; is that correct?

A Well, we -- I would say that if they carry firearms, they're to stay in their vehicles.

Q Now, is a Calvin H. Roswell now or has he ever been employed by you?

A Yes.

Q Has Charles R. Willard --

A Yes.

Q -- ever been employed by you? Are either of these two employees still working for you?

A Yes, they are.

Q Are both of them still working for you?

A Yes.

Q Now, was there a foreman on the Freeze-out Hill job on August 5th?

A There was -- the foreman for the ditching crew was down the road a ways.

Q You indicated earlier that you told all of your foremen along the lines to make sure that there was no violent activity on the part of your employees.

A Right.

Q Are you aware of the incident at Freeze-Out where one of your employees fired a weapon and has been so charged?

A Yes.

Q Are you aware of one of your employees havi..g thrown dynamite and being so charged?

A Yes.

Q Has any disciplinary action been taken about either of these incidents by you?

MR. BUXBAUM: I object as outside the scope of my direct and irrelevant to the issues before this court now.

THE COURT: Overruled.

A Could you repeat the question, please.

Q (BY MR. DUFFY) Have you taken any disciplinary action with respect to those two employees for those alleged incidents?

A We have told them that we wish that hadn't have happened and if we come into that situation again, unless it was right down to a matter of life and death, that they not do this again.

Q Have you issued any directives to your employees with respect to similar prohibitions on their violence?

A I do not understand that question. Do you want to make yourself a little clearer?

Q Have you issued any directives in general to your employees to desist from this type of violence in the future?

A Yes, we've always told them that we do not want them to ever start anything.

Q Are you the only field office manager of Haines Pipeline?

A At the present time, yes.

Q Are you Douglas Haines?

A Yes.

Q You, then, are the one that signed the affidavit in this complaint?

A Yes.

Q You are familiar with the contents of the complaint, then, are you not?

A Yes.

Q You're familiar with the specific -- or the vague allegations, I guess I should say, in paragraph thirteen with respect to incidents, bulldozers and the like? Would you like to be refreshed?

A I don't know what thirteen says.

MR. BUXBAUM: Your Honor, I object. If the witness is going to be cross-examined on a verified complaint, I submit he should be given one. There's no foundation for impeachment at this point. If counsel has a question about an issue of fact, perhaps he could ask it.

A This one you want me to read?

Q (BY MR. DUFFY) Is that the complaint that you signed and verified?

A Yes.

Q I direct your attention to paragraph thirteen, beginning on page seven of that complaint.

A Yes.

Q Do you have any personal knowledge that Dan Jones committed any of the acts that are alleged in paragraph thirteen?

A No, I don't.

Q Do you have any personal knowledge that Gene Fenderson committed any of the acts alleged in paragraph thirteen?

A No, I do not.

Q Do you have any information that any specific member of Construction & General Laborers 1334 or 254 committed any of the acts alleged in that paragraph of the complaint?

A No.

Q With regard to the employees that have called you alleging that they have received contacts from other people, have you advised those employees to contact law enforcement?

A No, I did not.

Q Did you advise them to file complaints with the county attorney's office of either Powell or Lewis & Clark County?

A No, I did not.

Q Who precisely is the individual who called you from the sheriff's office and advised you that you should leave the Warm Springs office? Did he identify himself?

A It was just -- he was in uniform and come to the office at Warm Springs. I didn't ever really pay any attention to what his name was.

MR. DUFFY: I have no further questions, Your Honor.

THE COURT: Additional cross-examination?

CROSS-EXAMINATION

BY MR. McKITTRICK:

Q Mr. Haines, your brother is Brad Haines; is that correct?

A Yes.

Q Are you the person who is generally responsible for the operation here in Montana?

A No, I'm not.

Q What's your specific responsibility?

A I just take care of all the -- like I said, the field office, which consists of the payroll, accounts payable, accounts receivable, the billing out on the progress of the job, the costing of the job, and --

Q He's responsible for everything else?

A Yes.

Q There's a report in the paper that your company is under a temporary restraining order that was executed by Judge Meloy in Helena.

A It's to my understanding that that has been lifted.

Q But there was a temporary restraining order imposed on your company for hiring unlicensed security guards; is that correct?

A Yes.

Q And how long were these unlicensed security guards on your payroll before being licensed?

MR. BUXBAUM: Your Honor, I object as irrelevant to the issues before this Court at this time.

THE COURT: I'll allow the answer.

A A month.

Q (BY MR. McKITTRICK) And they were armed guards?

A Yes.

Q There was testimony on your case-in-chief that you're trying to abide by the laws of Montana concerning license plates.

A Uh-huh.

Q Have all of your vehicles been registered and have Montana plates?

MR. BUXBAUM: I again object as irrelevant, Your Honor.

THE COURT: Sustained.

MR. McKITTRICK: Your Honor, my offer of proof would just be they have to come in with clean hands, in compliance of all laws.

MR. ROBINSON: I object, Your Honor, that whether or not -- well, excuse me.

THE COURT: I'm still going to stay with that.

Q (BY MR. McKITTRICK) You indicated that on July 23 your property, at least at that time, was on the Montana property near Warm Springs; is that correct?

A Yes.

Q And you used Montana Power Company as your headquarters also.

A Yes.

Q Would it be fair to say that you were an invited guest by Montana Power?

MR. BUXBAUM: I object as calling for this witness to state a legal conclusion.

THE COURT: Overruled.

MR. BUXBAUM: No foundation.

A We were come to the State of Montana on a contract to do a pipeline job.

Q (BY MR. McKITTRICK) And they invited you to use their property at Warm Springs as a headquarters for that work; is that correct?

A The office was there, and we asked permission if we could use their --

Q And in fact that wasn't even part of the bid specifications, was it?

A No.

Q Where are you now working? In what county, Mr. Haines?

A Lewis & Clark. I mean -- you mean -- now, I don't know what you're talking about. You're talking about the pipeline or myself?

Q You're based in Lewis & Clark?

A Yes.

Q And where's the point of the pipeline at this --

A The pipeline right now, as far as -- I know it's all in Powell County.

Q And how long will you be in Powell County?

MR. BUXBAUM: Objection; irrelevant.

THE COURT: Overruled; go ahead.

A I would say probably another two weeks.

Q (BY MR. McKITTRICK) Are you aware of the statement, the fact that your brother admitted that at one particular time your guards had at least one or two machine guns?

A I don't believe my brother ever made that statement.

Q Have you at any time employed on this project any illegal aliens?

MR. BUXBAUM: Objection; irrelevant.

THE COURT: I don't know; that's getting pretty far afield. I'm going to sustain.

Q (BY MR. McKITTRICK) Have you complied with the property tax laws in the State of Montana to date?

A That is not my responsibility.

MR. McKITTRICK: No further questions.

THE COURT: Any other cross?

MR. HILLEY: No cross, Your Honor.

MR. DUFFY: No cross.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. BUXBAUM:

Q Mr. Haines, about these security guards, you have employed a security force since you first came to Montana; am I correct?

A Yes.

Q And for what purpose?

A For the protection of our equipment.

Q And they are on the site at night?

A Yes, they are.

Q Are they on the site at daytime?

A No, they're not.

Q How many people are there during the day that are security people hired by you?

A Usually there's nobody.

MR. BUXBAUM: I have nothing further.

THE COURT: Thank you. You may step down.

We'll recess now until 1:15, if that's agreeable with everyone.

MR. HILLEY: Your Honor, I anticipate only one witness.

THE COURT: Thank you very much. My only concern was that we'd finish this afternoon, and from what you told Jerry, I take it that's true.

MR. DUFFY: Yes, Your Honor.

THE COURT: Thank you. 1:15.

(Whereupon, the hearing was held in recess at 11:55 a.m. and subsequently reconvened at 1:20 p.m., and the following proceedings were had and entered of record:

THE COURT: Court is in session; please be seated. Are we all here? Are we ready -- aim, fire, and fall back.

MR. ROBINSON: Your Honor, at this time I'd like to make a representation to the Court for the record, as an officer of the Court.

THE COURT: Yes, sir.

MR. ROBINSON: I have been advised, through our office, through an attorney, James Mazer, of Deer Lodge, Montana, that this morning a preliminary hearing was held before Judge McGillis in Powell County on the criminal case filed against Mr. Roswell and that Judge McGillis found there was no probable cause to bind Mr. Roswell over to district court on the felony charge with which he was charged. Excuse me, I have the wrong person. That's Mr. Willard, who is charged with the felony in the dynamite. Mr. Willard was found to be no probable cause. The complaint was dismissed. Mr. Roswell, who was charged with a misdemeanor on the discharge of the firearm, pled not guilty. The case went to trial. Judge McGillis found the defendant not guilty, and the charges have been dismissed.

I do not have the records of that. I'd be happy to supply to the Court the Court's findings or any legal documents which would verify in fact that that was the case, and I'm sure we can rely upon that representation given to us. So I'd ask the Court to allow us to supplement the record by submission of any documents from Judge McGillis's court that would corroborate the representations I'm making this morning.

THE COURT: Apparently, from the exhibits filed, Terry J. McGillis is a justice of the peace of the Cottonwood Township in the County of Powell.

MR. ROBINSON: That's correct, Your Honor.

THE COURT: All right, we take your representation. If you have some documentary proof you wish to file, would you please do that.

MR. ROBINSON: Thank you. I will, Your Honor.

MR. BUXBAUM: At this time the Plaintiff would call Brad Haines.

Thereupon,

WILLIAM BRADFORD HAINES,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

THE CLERK: Please be seated. State your full name, and spell your last name.

THE WITNESS: William Bradford Haines; H-A-I-N-E-S.

DIRECT EXAMINATION

BY MR. BUXBAUM:

Q Mr. Haines, what is your current address?

A 1915 Broadmore, Woodward, Oklahoma.

Q And your current occupation?

A President of Haines Pipeline.

Q Is Haines Pipeline at the present time a signatory to any collective bargaining agreement, hiring agreement, or any other written agreement of any type with any labor organizations or unions?

A No.

Q Was Haines Pipeline signatory to any such agreement prior to the time that it entered into an effort to bid and ultimately receive the contract on the project here in issue?

A Okay, restate the question, please.

Q Let me back up.

A Okay.

Q Haines Pipeline is currently signatory to a contract with Montana Power Company for construction of a natural gas pipeline.

A Yes.

Q At the time that Haines Construction bid for that project, was it signatory to any collective bargaining agreements with any labor organizations or unions?

A No.

Q Now, with respect to the pipeline project and the contract in which you entered with the Montana Power Company, can you tell the Court, as between you and the next high bidder, how many dollars' difference was there on what you bid the project for and the next high bidder?

A Approximately one million, four hundred thousand dollars.

Q That is, you had bid it one million, four hundred thousand dollars lower than the next high bidder?

A Yes, that's correct.

Q And subsequently you entered into a contract with the Montana Power Company, who accepted your bid?

A Yes.

Q And that contract is in effect and is binding at this time, correct?

A Yes.

Q Under that contract, what is Haines Pipeline obligated to do?

A The contract calls for us to construct a two hundred mile, sixteen-inch pipeline between Morrell Junction and about thirteen point five miles north of Cut Bank, Montana.

Q What is the full value of that contract?

A It's estimated by the Montana Power people as around twenty-five million dollars.

Q In connection with your bidding process with the Montana Power Company and the negotiations that took place prior to the time this contract was signed, were there any commitments made by you in terms of hiring Montana employees?

A Verbally. I was asked by the MPC people how many employees we would try to hire locally. My response was, to that, as a general rule, when we move from one state to another, a lot of the local labor is hired in-state, and that we would try to hire approximately in the neighborhood of two-thirds of our work force in Montana.

Q And have you done that?

A Yes, we have.

Q Now, prior to July 22nd, 1983 and the time that you were awarded the Montana Power Company contract, were you approached by any representatives of any labor organizations who requested or demanded that you sign a labor contract?

A Okay, now, that's prior to the 22nd of July?

Q That's right.

A Yes.

Q Who were those persons?

A I was approached by Ted Poole of Local 798; I was approached by Dan Hillard, representing the Operating Engineers from Washington, D.C., International.

Q Was that after you had already bid this project?

A No -- well, yes, it was after I bid the project, but it had not been awarded.

Q But prior to the time the contract was signed?

A Prior to the time the contract was signed, I was approached by Dan Hillard on one occasion.

Q Was there ever a time that you were approached by Mr. Mayes?

A Yes. After the contract was signed and work had been started, I was contacted one evening as I was walking into a motel in Deer Lodge by Dan Hillard and Mr. Mayes.

Q That's Jim Mayes?

A Yes.

Q Did Jim Mayes identify himself at that time?

A Yes. He identified himself as being affiliated with the Local 400 here, out of --

Q What did Mr. Mayes and Mr. Hillard request of you?

A Well, they asked me if I would be interested in signing agreements with them. And, you know, after a lengthy discussion, it become, you know, economics to us, and I told them we were not interested.

Q When did that meeting take place, approximately?

A Oh, I'd say somewhere in the neighborhood of around the 1st of July; just approximately.

Q 1st of July of this year?

A Yes, 1983.

Q Now, subsequent to that meeting, has any representative of any labor organization or union made a formal request on you that you enter into any sort of labor agreement or collective bargaining agreement?

A Are you talking about after that meeting?

Q Yes.

A Yes, there was a meeting held in Butte, Montana at the

Copper King Inn.

Q Who was present at that meeting?

A Well, there was several people. I think there was nine or ten people there representing the union: Mr. Hillard, Mr. Mayes, Mr. Jones, Mr. Fenderson, Mr. Murry, Mihailovich, and some others.

Q I'm handing you what has been previously identified and admitted in evidence as Plaintiff's Exhibit 19. Is that a list of the persons who were at that meeting about which you're discussing?

A Yes.

Q For the purposes of the record, would you read the names of those labor representatives who you've already not mentioned.

A Jim Roberts; Hal Branham -- Brackham -- I can't read his name; and Burlingame.

Q William Burlingame, or Bill Burlingame?

A Yes.

Q Now, we're going to pick this subject up in a moment. Mr. Haines, when was the first time, to your knowledge, that you had any damages done to any Haines Pipeline property that was not associated with normal wear and tear on the job or was extraordinary?

A It was around July 13th or 14th when we had the dozers damaged on Mullan Pass. We had seven dozers damaged at that time.

Q What kind of damages were done, or what sort of things were done to the tractors?

A Well, apparently some foreign substance has been poured into the crankcases of the tractors which will cause considerable damage to the engines.

Q Have you at this time ascertained precisely what that's going to cost the company?

A Not at this time. Approximately probably fifteen, twenty thousand dollars per tractor.

Q What will have to be done to determine precisely how those tractors can be repaired?

A Well, the engines will have to be completely torn down and the damage surveyed at that time.

Q Now, after July 13th, were there any other extraordinary damages or extraordinary events that were directed against any of your property prior to July 23, 1983?

A Yes. A bomb was exploded in my office in Woodward, Oklahoma.

Q Were you present at the time that bomb was exploded?

A I had left the office about an hour and had been home when the bomb exploded.

Q Where was the bomb exploded?

A Right outside my office, right on the foundation of the building.

Q Was there considerable damage done to your building?

A Well, it blew the windows out, wrinkled the wall, caved the wall in.

Q But you were not in the office at that time?

A No.

Q Now, on July 23, 1983, were you in Montana or were you in Oklahoma?

A I was in Oklahoma.

Q On that date, did you receive reports from some agent or employee of yours as to any extraordinary events on your construction pipeline project?

A Yes. It started very early that morning. I received a call from the office manager telling me that there was a considerable number of people at the Warm Springs exit, that they were advancing upon the -- they would not let us through, to start with, and there had been some damage to some company vehicles which had been driven by Mr. Webb, and that they would not let the people through, and that the employees had turned around and went back up the interstate towards the Galen entrance and tried to get into the job site.

Q Were you provided with up-to-the-minute reports throughout the course of the day?

A Yes, I received a report on the half hour just about all day long.

Q Now, did that prompt you to come up to Montana?

A Yes. I flew up to Montana that evening.

Q That day?

A Yes.

Q As a result of your coming to Montana, did you investigate or did you cause to have investigated the types of damages that were done to your property as a result of the incidents that day?

A The next morning.

Q What did you discern in terms of what damages were sustained to your equipment, and so on?

A Well, as far as physical damage we had. of course -- the road grader had -- or the maintainer had the windows knocked out, the tires slashed. We had damage to personal property belonging to landowners where a dozer had been started up and turned loose. We had, you know, windows broken, and et cetera.

Q Were there any other types of damages that you sustained as a result of the incidents that day?

A Well, I'm sure that when we talk of damages, it's hard to really put a figure on what we have lost. We've lost a lot of precious days, you know. We've -- the down time, the interruption of people leaving because of the group of people that swarms our employees.

Q Have you ever entered into any calculation as to what it cost you in out-of-pocket expenses for missing a day of construction on the pipeline?

A It's in excess of thirty thousand dollars a day when we don't work.

Q Now, in connection with the incidents on July 23, did you engage in a decision-making process thereafter as to whether or not you would go back to work the following day?

A Yes. Of course, that was probably the most important decision I've had to make in a long time, was whether to go back to work or shut down. We were concerned about the safety of our employees. I did have a conversation with the governor on Sunday morning. He had called.

Q That would be Governor Schwinden of Montana?

A Yes, Governor Schwinden of Montana. They had called and told me that, you know, they didn't know what I needed, but, you know, they would not allow this kind of stuff to happen in the state, and that if it took the National Guard to keep these type of riots from happening, that's what they would do. So throughout the day we proceeded to make decisions as to whether to go back to work or not. I was in contact with Officer Connors and Wilkerson of the Anaconda Police Department, or sheriff's office.

Q What day was this, now?

A This was Sunday, the 24th.

Q All right.

A We were shut down that day completely.

Q I understand that. And that day you also had a conversation with Officer Connors and Officer Wilkerson of the

Deer Lodge County Sheriff's Department?

A Right.

Q What was the gist or the result of that conversation?

A Well, the conversation was between the two officers and myself and Walter Kelley and Walt Kelley's office of Montana Power Company over the speaker phone. And I was trying to get a feel for exactly what kind of help we would get from local law enforcement if we went back to work. Officer Connors and Wilkerson reported to me that they felt like if we went back to work that there would be some serious injuries, that a lot of lives would be in danger, and that they were hearing that there was going to be as many as six hundred; that they could not control what had happened on the 23rd, and they were sure they couldn't control what would happen if there would be six hundred people show up.

Q Now, did that information that was provided to you have any impact on your decision to refrain from working for a period of time?

A Of course it did. We had to take that as pretty well what we had to look forward to. So we made a decision to completely shut the project down until we felt like we could go back to work in a safe, orderly manner.

Q How long did you remain shut down?

A We were closed down for a total of nine days.

Q Now, a few days after your conversation with Sheriff

Connors and Officer Wilkerson and Walt Kelley, did you attend a meeting called by some person at which the governor and these other persons were present that you represented on Plaintiff's Exhibit 21?

A Yes.

Q Who called that meeting, if you recall?

A Well, to my knowledge it was set up by Governor Ted Schwinden.

Q Incidentally, for the record, this is Plaintiff's Exhibit 19 to which I just made reference.

What was the purpose, or ostensible purpose, of this meeting, Mr. Haines?

A Well, he called me -- or the governor called me late that evening and asked that I attend the meeting, that the Montana Power people were going to be there, the union representatives were going to be there. And at that time I pretty well related to him that I didn't feel like we had done anything wrong; therefore, I would go to the meeting, but I was going to go to listen.

Q Did you?

A Well, I ended up making some statements in the meeting.

Q The unions were represented at this meeting --

A Yes.

Q -- by reference to the persons you've previously identified?

A Correct.

Q Now, did they make any demands on you at that time or requests of you whatever?

A Well, I think I would have to address the meeting as half of it being between Montana Power and the unions themselves, discussing some earlier things that -- some earlier decisions that Montana Power made. There was a short caucus between the union people at where the Montana Power people and myself left the room. We come back and basically wanted to know what their intentions were.

Q What did they advise you?

A Their intentions, as they stated to me, was to try to organize.

Q Try to organize you?

A Try to organize Haines Pipeline. Of course, the statement was made that "It's kind of beyond us how come you haven't tried to do that in the first place."

Q Now, when they said "we" would try to organize Haines Pipeline, what did that suggest to you?

MR. McKITTRICK: Objection.

THE COURT: Overruled.

A It suggested to me that hopefully we would not have no more violence, that they would come up and set out a legal informational-type picket and stay within the guidelines of the law.

Q (BY MR. BUXBAUM) Did anyone at that meeting, representatives of any labor organizations, make any statements of intention to you about their future activities on your pipeline project?

A Yes.

Q What did they say?

A Well, of course, as being concerned about that, and I said, "What is your intentions?" And they said, "Well, our intentions are to try to organize" --

MR. McKITTRICK: Your Honor, I would object to this.

MR. DUFFY: I would object to this, also.

THE COURT: I think that's rather indefinite who said that.

MR. BUXBAUM: Can I build that foundation, Your Honor?

THE COURT: Go ahead. Yes.

MR. BUXBAUM: Can the witness first be asked what was said, and then I'll ask him who said it?

THE COURT: No, just lay the foundation.

Q (BY MR. BUXBAUM) Okay. Who made these statements to you, Mr. Haines?

A Dan Jones made a statement they were legally going to try to organize us and stay within the framework of the law.

Q Was that the only person that made that statement?

A That I recall.

Q Did anybody else present who represented any labor organization indicate any unwillingness to go along with that statement of intention?

A No. I asked a statement as to who was the spokesman for the group in the meeting, and it was represented to me that Dan Jones was the spokesman.

Q Now, Mr. Haines, as a result of this statement that they would seek to organize you, has anyone, since July 23 to the present time, sought to determine whether a majority of your employees would like to join any labor organization or be represented by one?

A Not to my knowledge.

Q Has anyone, to your knowledge, put up a gate or handed out cards at the site of your construction pipeline attempting to ascertain what the employees' sentiments might be in that regard?

A Not to my knowledge.

Q Now, on or about August 4, 1983, which I'll represent to you was a week ago yesterday, did you receive information that there may be another problem in the nature of large numbers of people appearing on the job site the following day, August 5th?

A Yes, we received information through the sheriff's department that a large number of people were supposedly supposed to walk off of the Colstrip job and be en route to the Warm Springs pipeline project.

Q What was your decision-making process in response to that information?

A Well, the decision for us to not create a -- an example, to gather a lot of people up. What we did is directed our people to go, you know, directly to their piece of equipment or to their job site and go on to work, rather than congregate in one area.

Q Where had your employees typically been congregating prior to that decision?

A The majority of them were showing up at the warehouses, which is something we asked them to do every morning, at the Morrell Junction.

Q That had been the scene of the incidents on July 23?

A Correct.

Q So it was your decision, in order to avoid some confrontation there, your employees would go by various routes directly to their equipment?

A Correct.

THE COURT: Counsel, just go ahead and ask questions and don't make speeches, please.

Q (BY MR. BUXBAUM) Were there any other decisions made in terms of what types of instructions would be given to your employees?

A Well, we tried to pretty well maintain the attitude of not partaking in any of the riots or fighting back. We've instructed our people that if this occurs and a mass of people forms out there, to just, you know, get in your vehicles, leave, and get out of the road.

Q Now, concerning August 5, 1983, were you in Montana that day?

A No.

Q You were in Oklahoma?

A Yes.

Q Were you again receiving reports, up-to-the-minute reports, on what was transpiring?

A Yes.

Q On that day did you have any conversations with any law enforcement personnel?

A Not myself, no.

Q Did you have any conversations with Governor Schwinden that day?

A Yes, I talked with the governor about mid-morning.

Q Now, at the time you talked to the governor, what was the information you had from the pipeline project?

A The information that I had received from my office was that there was approximately a hundred to a hundred fifty people, some at Elliston, some at Morrell Junction, some on Freeze-Out; you know, just in different places. In talking to the governor, I asked him basically what was going on. This was the second time that we had been approached in these terms. He assured me that there was only about -- from his knowledge there were only about fifty or sixty people out there and that he had as many law enforcement people out there as there were people approaching the pipeline employees.

Q Did the governor convey to you the impression that he'd been directly involved in the decisions about what law enforcement personnel would be there on August 5th?

A Yes.

Q Now, getting back to August 5th, did you receive reports during the day of August 5th about violence on the pipeline project?

A Yes.

Q Did you receive reports about damages to Haines equipment and property?

A Yes.

Q Reports about damage to your employees' equipment and property?

A Yes.

Q Did you make an attempt at that point in time, or later than that, to inspect the type of damage that had been caused?

A Yes, once I arrived.

Q You came back to Montana after that --

A Yes.

Q -- again? What did your inspection disclose in terms of damages sustained?

A Well, again, windows had been broken out of our stringing trucks, a dozer radiator had been shot into, an exhaust manifold was shot and various windows broken; things like that.

Q As a result of the incidents that occurred on August 5, did you lose any employees?

A Yes.

Q Can you tell the Court how that came about.

A Well, of course, we've had -- we've lost numerous employees throughout the ordeal, from the 23rd on, from either scare tactics or threats.

Q Now, did you lose a day's work on August 5 as well?

A Most of the day.

Q Did you go back to work the following day?

A Yes.

Q You've been working since that time?

A Yes.

Q So you have lost, in effect, ten days on your pipeline project because of the incidents occurring on July 23 and August 5.

A Yes, ten working days and probably three weeks' production.

Q Now, in connection with the working days lost, is it possible for you now to predict what type of damages that may cause down the line in terms of your ability to complete your project?

A There's no way at this time that we can estimate the total number of dollars that we're going to suffer.

Q Is there something peculiar about this time of year that makes it easier to lay pipeline now?

A Well, naturally, the weather -- the temperatures, right. The production should be best this time of year of any. Later in the fall, as we get up towards the other end, these ten days to three-weeks' production could mean the difference in whether we're going to finish this project or not this year.

Q At the time that you had your conversation with Governor Schwinden on August 5, did you at that time make any specific requests of him?

A Well, he had told me that basically if we had this problem again like occurred on the 21st of July, that he would intervene, and if it was so necessary to call out the National Guard, he would. Our conversation pretty well was narrowed down to the local law enforcement would call him if they felt like additional help was needed. And he was telling me there was only fifty or sixty people there. My reports was there was two or three times that many people there and that, again, it was getting out of control in some places. Rather than argue with the governor, I just told him that we would wait, I would get hard facts. I was at a disadvantage. I was on business in Oklahoma, and we would see who was right or wrong.

Q Now, switching the subject just a little bit, did there ever come a time when any agent or representative of any local or state law enforcement agencies made a request on you to pay them any money?

A Indirectly.

Q Can you explain?

A Yes. On two different occasions, I had a project superintendent that was approached by the Deer Lodge County Sheriff's Department to help in terms of subsistence for overtime and also pay for any damages that might occur to their vehicles.

Q What was your response to that?

MR. DUFFY: Objection, Your Honor. Could we have times and individuals that were involved in these?

THE COURT: Yes, I think that's very important.

Q (BY MR. BUXBAUM) Could you tell us who was involved and what time.

A Probably Superintendent Owings informed me that he was approached by Sheriff Connors for some subsistence with the number of hours they were having to put in to help patrol and control the violence that was going on.

Q So he wanted you to help pay for the costs involved to the county?

A Right. Right. Another occurrence is when the sheriff's department was going to escort my brother's family out of the motel in Deer Lodge on July 23rd, it was reported to me -- I was called in the Oklahoma office, and in reference to they would go up there and escort the family out, but if there was any damage whatsoever to the vehicles, I wuld pay for it.

MR. DUFFY: Your Honor, again, could we find out who made the phone call and what date?

MR. BUXBAUM: Your Honor, I will ask the questions, and certainly intend to.

THE COURT: If there's an objection, state it. Just stop until I can rule.

Okay, I sustain the objection. Go back now and lay the foundation.

Q (BY MR. BUXBAUM) What day was this you had this conversation about assisting in the event of any damages in transporting the family?

A July 23rd.

Q Okay. This was in connection with the testimony your brother Doug gave this morning that you overheard, correct?

A Correct.

Q About the family being transported to the county line?

A Yes.

Q Now, what was your response to that request?

A Well, Doug called -- my brother Doug called me, and he said, "Brad, they'll help get the family out. They don't want me to go up there," as he previously testified. He said, "They will go in and escort them out. If there's any damage, they want to know if you'll pay for it." I just told Doug, "Promise them anything they want. It's more important for us to get the people out."

Q And that was ultimately accomplished, then.

A Yes.

MR. BUXBAUM: May I have a moment, Your Honor?

THE COURT: Yes.

While we're waiting, this phone call to the governor, that's October 5? Do I have that date right?

A Yes.

MR. BUXBAUM: August 5, I believe, Your Honor.

A August 5, yes.

THE COURT: Okay. Who initiated the call?

A I called from -- I was in Oklahoma City. I called Dave Wanzenried at the governor's office. He was on the telephone. The secretary told me that the governor himself would call me back in five minutes. I left a number. I did not get a call back for about forty-five minutes. I then called the governor at his mansion.

THE COURT: You called the governor both times?

A (Witness nods head.)

THE COURT: And what time of the day was this?

A Approximately 10:00 in the morning.

THE COURT: Thank you.

Do you have anything further?

MR. BUXBAUM: Your Honor, I don't believe I have anything further. You may inquire.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. HILLEY:

Q Mr. Haines, you've testified that you met with Mr. Poole; is that correct?

A Yes.

Q I assume that you know Mr. Poole.

A Yes.

Q Or have known him.

A Yes.

Q Now, where did this meeting with Mr. Poole take place?

A In my Woodward, Oklahoma office.

Q Now, does Mr. Poole have offices there in Oklahoma, too?

A To my knowledge, he has one in Tulsa.

Q Tulsa, Oklahoma, right?

A Uh-huh.

Q And that's where his members generally come from in Oklahoma, correct?

A I don't work their people, but I would imagine that that's true.

Q Now, what did Mr. Poole say to you?

A Mr. Poole asked that we use Local 798 members to build this pipeline.

Q Now, to your knowledge, Mr. Poole's local union, 798, is a pipeliner local; isn't this correct?

A Yes, to my knowledge.

Q And have you ever worked with Mr. Poole before on any other projects?

A Indirectly.

Q Now, with all of your testimony pertaining to what happened here in Montana, did you receive any reports regarding Mr. Poole's conduct in any of this?

A The only reports that I received are comments that he has been in this area.

Q In this area?

A Uh-huh.

Q And, of course, this comes through what other people have told you, right?

A Yes.

Q Okay. Have you had any reports regarding Mr. Poole's conduct in this area?

A No.

Q And you don't know for sure that Mr. Poole was ever here in this area; is this correct?

A Not that I can testify to.

Q Now, do you know of your own knowledge whether any members of Local 798 were even in the State of Montana when any of this occurred?

A Not that I can testify to.

Q You heard the deputy sheriff testify that Mr. Hillard was from Oklahoma and had Oklahoma plates? Were you in the courtroom when that occurred?

A Yes.

Q And that he also testified Mr. Hillard was a pipeliner, correct?

A I didn't remember hearing him say it, but he is.

Q Okay, but my question really goes to whether or not of your own knowledge was Mr. Hillard a pipeliner?

A The only -- the only time that I've ever met Mr. Hillard was on some different occasions where he has represented to be a pipeline organizer.

Q Pipeline organizer? From the Operating Engineers Union, right?

A Yes.

Q Okay.

A Representing the International.

Q All right. Now, what would you say with your association with Local 798 indirectly: this local is a construction local, isn't it?

A I believe so.

Q Almost in exclusively construction; is this correct?

A I believe so.

Q And yet you don't know of your own knowledge whether or not this local was ever here.

A No.

Q Or Mr. Poole.

A No.

Q Or any officer or member of Local 798, correct?

A Correct.

MR. HILLEY: No further questions.

CROSS-EXAMINATION

BY MR. DUFFY:

Q Mr. Haines, I didn't get this cleared up during your testimony about these phone calls with Sheriff Connors and Keith Owings. When did that telephone call occur?

A It's been reported to me by Keith Owings that that has happened on more than one occasion, so the dates I can't give you.

Q Well, what occasions? You don't have any recollection of the dates on which these phone calls occurred?

A Not right now, no.

Q What period of time did they occur?

A They occurred after the July 23rd riot.

Q Now, you called the governor on August 5th, 1983, and he advised you that he was in contact with local law enforcement people in the Deer Lodge valley; is that correct?

A Yes.

Q And advised you further that local law enforcement officials had said they would advise him if they needed help?

A Well, to back up, apparently he had two representatives of his own in the Elliston area.

Q Okay.

A And that's where his advice was coming from.

Q But didn't you testify that he said that he had advised you that he was in contact with the local law enforcement officials?

A Yes. I think he was directing that through his people. I believe it was to Rick Day and Rick -- I don't remember the other Rick's last name.

Q Rick Deyhue (phonetic)?

A I believe so.

Q And they were the governor's on-scene liason officers?

A Yes.

Q To your knowledge was any request conveyed by local law enforcement officers to the governor that they needed additional assistance?

A Not to my knowledge.

Q Did you personally, or any of your agents, discuss this conversation you had with the governor about the National Guard with any local law enforcement people?

A Restate the question, please.

Q To your knowledge did anybody in your organization discuss this offer of the governor to provide National Guard support with any local law enforcement people?

A I discussed that with Jim Connors on the 24th of July.

Q So Sheriff Connors was in fact aware that this available help was there, even through you, irrespective of whether the governor had advised you of that fact; is that correct?

A Yes.

Q Now, once again, would you tell me why the decision was made not to work on July 25, 1983.

A I was advised, as I earlier testified, by Sheriff Connors and Officer Wilkerson, that at that particular time they felt like it would be an awful poor idea for us to go back to work, based on the momentum, that the number of people that were there, that the riot actions had went on, and that they were not able to control them.

Q Now, on or about August 4th, you received information of rumors that another potential large group -- you said up to six hundred -- union people would be in the area; is that correct?

A Well, the six hundred come from the rumors that we were hearing from July -- from July 25th. The number of people that were congregating and the rumors we were hearing on August 4th were anywhere from a hundred and fifty to five hundred.

Q A number, by rumor, anyway, as great as or greater than the July 23rd number; is that correct?

A Yes. Yes.

Q But you did not elect to shut down your operations at that time, did you?

A Right. That's where we made the decision to go directly to work rather than congregate at the Warm Springs.

Q You attended a meeting, you said called -- was it by the governor's office -- at the Copper King in Butte?

A I was requested to attend by the governor's office.

Q Do you recall any statements you made at that meeting with respect to security guards employed by Haines that were armed with machine guns?

A Yes.

Q There's a quote attributed to you in the Montana Standard of July 27, 1983 that, "If machine guns are a problem, I'll tell them not to use them." Is that correct?

A That may be the quote, but that's not what was said.

Q Well, what was said? What did you say there?

A I was asked were machine guns -- did the security people have machine guns. I replied, "We hired an outside security firm. We did not tell them how to man or how to arm their people. We certainly instructed everybody that we're not going to partake in the violence, and it was pretty apparent after July 23rd that we had no intentions of using any firearms or such weapons during the riot" -- and if it was a big issue, if we had them, we would remove them.

Q And did you discover whether in fact they had machine guns?

A They did not have machine guns.

Q Were you not asked at that meeting as to whether or not your employees had machine guns?

A Yes.

Q Your security guards. And you replied they indeed did have them but they were just for show?

A I was asked if they had machine guns. I was under the impression they had a similar-looking weapon; you know, something that looked like that, and I did say that if they were there, it was strictly for show, because we had no intentions of using them.

Q The machine guns, then, were just there for show; is that your answer?

A Yes.

Q Are you familiar with the complaint that was filed in this case? Have you had a chance to read it?

A Yes.

Q Could I have you take a look at it again, please, and specifically to paragraph number thirteen, which I think begins on page eight of the complaint -- the part that begins on page seven. Are you familiar with the allegations that are contained in that paragraph with respect to violent acts that occurred, or allegedly occurred?

A Yes.

Q Do you have any knowledge of your own that any of those acts were perpetrated or carried out by Dan Jones, of your own knowledge?

A Not being on the job site that day, no.

Q Do you have any information of your own that any of those acts were committed by Gene Fenderson?

A Not being on the job site, no.

Q Do you have any information that any of those acts were perpetrated or carried out by any member of Local 1334 or Local 254?

MR. BUXBAUM: Your Honor, a point of clarification: I assume we're talking about Laborers Local. Could we make that clarification?

Q (BY MR. DUFFY) In both cases, International Union 1334 and 254.

A Well, again not being on the job, I'd have to say no.

Q Thank you. One last question: It's my understanding at the meeting referred to at the Copper King, you said that Mr. Dan Jones was pointed out to you or was told to you he was a spokesman for the group; is that correct?

A Very correct.

Q Okay. And I think you also testified Mr. Jones advised you that the intentions of the unions was to undertake peaceful informational picketing; is that correct?

A And stay within the framework of the law, yes.

Q And it was also your testimony that no other union leader at that meeting contradicted Mr. Jones's interpretation of what the unions intended to do; is that correct?

A Correct.

MR. DUFFY: I have no further questions.

CROSS-EXAMINATION

BY MR. McKITTRICK:

Q Mr. Haines, is the Jim Connors that you were referring to in your testimony the same Jim Connors that was in this courtroom yesterday?

A I believe so.

Q And I take it he was subpoenaed by Haines to be present at the show cause hearing; is that correct?

A Yes. To my knowledge, yes.

Q You indicated that a bid was let to you by Montana Power; is that correct?

A That's correct.

Q And when were you notified that you had the bid?

A I think the executed agreement was on June the 16th.

Q 1983?

A Yes.

Q And then sometime after that date, you represented to Montana Power that you would hire Montana people; is that correct?

A No, it was not after that date; it was --

Q Was there anything in the bid or the agreement you had with Montana Power indicating and representing that you would hire Montana people?

A No.

Q Do you consider the representation made to Montana Power to be an oral obligation or a legal obligation?

MR. BUXBAUM: I object. This calls for this witness to make a conclusion on a matter that is not correct.

THE COURT: You may restate it.

Q (BY MR. McKITTRICK) Is that a legally-binding representation, from your point?

MR. BUXBAUM: Same objection, Your Honor.

THE COURT: Let's leave out the legal. Do you think that's binding? How about that?

A It's a verbal agreement.

Q (BY MR. McKITTRICK) Do you feel it's binding?

A Yes.

Q You have had occasion to look over the complaint, Mr. Haines. Do you, of your own knowledge, know of any acts perpetrated by the Montana State AFL-CIO, as alleged in the complaint?

A No.

MR. McKITTRICK: No further questions.

THE COURT: Anybody?

MR. DUFFY: No questions.

THE COURT: Redirect?

MR. BUXBAUM: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. BUXBAUM:

Q Mr. Haines, directing your attention to Plaintiff's Exhibit Number 19, which is in evidence, and which you've testified is the list of labor representatives and other persons present at the July 26 or 27 meeting called by the governor, do you see on that list the name of Mr. Jim Mayes?

A Yes.

Q Mr. Haines, there has been some cross-examination about this question of machine guns and statements you allegedly made, or that were attributed to you. I want to clarify this, because one of the final questions asked you was something like: "Is it your testimony that you said machine guns were there just for show?" Mr. Haines, to your knowledge, did your security people at any time employ machine guns?

A No.

Q Were you attempting to make an unequivocal statement that they had machine guns in their possession when you answered Mr. Duffy's question?

MR. McKITTRICK: Objection; leading.

THE COURT: He may answer.

A Restate your question.

Q (BY MR. BUXBAUM) Were you intending to make an unequivocal statement in response to Mr. Duffy's question that your security people had machine guns?

A I'm not sure I understand what you're asking.

EXAMINATION

BY THE COURT:

Q Why don't you just tell us what you intended to say when you made the statement.

A Well, again, I'll address the Court as saying that this security firm was hired, and -- to protect our equipment from vandalism.

Q Right.

A And when they showed up at the job site, it was a man and dog team. They had, I think, a handgun, a rifle, and the weapon that -- so-called machine gun, which apparently is a -- just an automatic single-shot type of weapon.

Q Would it be fair to say it's your understanding now that's a semiautomatic rifle?

A Yes. I never -- I never knew whether it was a machine gun or -- you know, I never looked at it.

Q You're not much on guns; is that right?

A No.

Q But you did see this weapon?

A I just saw one hanging in the rack one time of one of the security people's gun rack.

Q Of this organization you hired; is that right?

A Yes.

Q I take it, from what you're telling me, when this guard came on duty, you saw him when he came on.

A Yes.

Q And he did have a dog.

A Yes.

Q And a shotgun?

A I don't know whether he had a shotgun, but I assume he did.

Q And this gun that appeared to you what you made the assumption was an automatic gun of some kind?

A Yes. Of some kind, yes. That clicked. That's all I can --

Q And I get the impression it's like these guns that we see that were used in Vietnam.

A Well, I wasn't in Vietnam, but it could have been.

THE COURT: But, anyway, go ahead, counsel.

REDIRECT EXAMINATION (Resumed)

BY MR. BUXBAUM:

Q Yes. On the security force, this security force was hired for what purpose, again?

A For the protection of our equipment from vandalism.

Q And they are to work what hours of the day or night?

A They work from 5:00 in the afternoon until 6:30 the next morning.

Q And that is all?

A That is all.

THE COURT: And I think it's important, and I don't mean to interrupt counsel, but this guard, when you saw him come to work, that was in Montana on this -- where was it?

A It was on the -- at Morrell Junction.

THE COURT: At the Morrell Junction. And do you remember what day that might have been?

A What day?

THE COURT: Yes.

A Not -- I can get close. Probably around June 18th, June the 19th, probably is the first time --

THE COURT: That you saw him?

A Yes.

THE COURT: With this equipment that you have made reference to?

A Well, I didn't notice the equipment until after it become an issue.

THE COURT: And when was that, about?

A It was, that I really took notice, was after July 23rd, because it was not an issue up to that point.

THE COURT: Right. Now, counsel, I didn't mean to ruin your train of thought or anything, so --

MR. BUXBAUM: You hadn't, Your Honor.

THE COURT: All right.

Q (BY MR. BUXBAUM) Mr. Haines, how far is the Elliston area, to your knowledge, from the Freeze-Out point area, in miles? You can approximate.

A I would say, in the direction of the right-of-way, probably ten miles.

MR. BUXBAUM: I have nothing further.

THE COURT: Counsel?

RECROSS-EXAMINATION

BY MR. DUFFY:

Q Mr. Haines, were you in the State of Montana on July 25th, 1983?

A Yes.

Q Are you aware of a visit that Sheriff Jim Connors made to your construction yard near Warm Springs on that date?

A I was told, yes, that he made a visit.

Q You advised the judge that you're not particularly familiar with firearms, but does AR-15 automatic rifle with a banana clip ring any bells with you in respect --

A It doesn't do a thing for me.

MR. DUFFY: Thank you.

RECROSS-EXAMINATION

BY MR. McKITTRICK:

Q This security guard force you're referring to, is that the K-9, "K" dash "9"?

A I believe that's the company in question, yes.

Q And that's the security force that was the subject of the temporary restraining order in Judge Meloy's court that your brother Doug testified about?

A Yeah. We were contacted by the state.

Q And they were operating in Montana illegally for about a month; is that correct?

MR. ROBINSON: I'm going to object to that, Your Honor.

Q (BY MR. McKITTRICK) If you know.

MR. ROBINSON: I'm going to object to that as a mischaracterization.

Q (BY MR. McKITTRICK) Were they licensed in Montana?

A Apparently they wasn't. I didn't find out about this until a later date. They were subcontractors.

Q Have you employed any aliens here in Montana on your project?

A To my knowledge, no.

MR. McKITTRICK: Okay.

MR. BUXBAUM: I have one final question on redirect, if I may.

THE COURT: Yes, go ahead.

REDIRECT EXAMINATION

BY MR. BUXBAUM:

Q This security force, quote, closed quote, consists of how many people, Mr. Haines? Did consist of how many people?

A With the K-9?

Q Yes.

A K-9, I think there was a total of three people that worked for K-9 out of the eight security people we had.

Q And they patrolled the various parts of this quite long pipeline?

A Yes.

MR. BUXBAUM: I have nothing further.

THE COURT: Do I understand you right: three of the K-9 people, they were from Oklahoma. Is that where you hired them?

A Yes.

THE COURT: And they were three of eight, so you had five other people?

A Night watchman-type capacity people.

THE COURT: And where were they from?

A Most of them from the Deer Lodge area.

THE COURT: They didn't have this weaponry?

A No. No, sir. We only had, I think, three people with the man-dog type team situation.

THE COURT: Did these other five have weapons of some kind, to your knowledge?

A A camera.

THE COURT: A camera? Okay, do any counsel wish to examine?

MR. DUFFY: No, Your Honor.

MR. HILLEY: No, Your Honor.

MR. McKITTRICK: No, Your Honor.

THE COURT: Thank you. Your next witness, please.

MR. ROBINSON: Your Honor, at this time, before we rest our case in support of the preliminary injunction remedy, I think the Court should clarify something regarding the Operating Engineers Local 400. I think the record should show that on Monday, August 1st, when we appeared before this Court seeking a temporary restraining order, prior to that time we had given Local 400 notice that we were going to seek such an order, and in the courtroom that day was Mr. Barry Hjort, the attorney for Local 400 and the individually-named defendant representatives of that union. And I do recall Mr. Hjort identified himself at the Court's request as being here that day, at which time we filed the complaint and motion for a preliminary injunction.

I think our record will show that Operating Engineers Union was subsequently served. I don't have at my fingertips the exact date that they were served, but they've had knowledge of the suit. Mr. Hjort was in court on August 1st when the suit was filed. Also, Mr. Mayes has been under arrest, and arraignment for him was set since the last Friday, August 5th, and Mr. Hjort represented to the Court that he also represents Jim Mayes individually. So I think those facts ought to be put into the record before we rest. That's all.

THE COURT: Do you wish to respond?

MR. HJORT: I'd like to respond, Your Honor. I'd like to draw the Court's attention, for the sake of the record, to the fact a stipulation was offered by Mr. Robinson at the outset of these proceedings to the effect that the mailing address for Local 400 was 2737 Airport Road, Helena, Montana. I'd also represent to the Court that no documents of service for Mr. Mayes, Local 400, or Mr. Burlingame arrived at that address until it would have been Wednesday of this week at 11:15 a.m. in the morning.

And to the extent that I was here in court approximately ten days ago, that's certainly true the record will reflect that, and I presumeably would have been available for service on that date for service to my clients. No effort was made to serve me at that period of time. So far as my clients are concerned, we had none of the moving papers until two days ago.

THE COURT: Yes, that thought does come to mind. You were here; he could have just handed you the papers if he wished to do so. The record will show exactly what happened, I believe, from beginning to end, from the time of the first appearance here until through this proceeding.

MR. ROBINSON: Your Honor, perhaps the record could reflect one additional thing. The Court sent out an order. I don't think any of the counsel, including ourselves, were aware of the date of the show cause hearing until we received an order in the mail from you, or from the Court. And I assume that counsel, Mr. Hjort, did receive that order in due course of mailing.

MR. HJORT: I'd be happy to represent to the Court that I did not receive any such order. I had a telephone call from Your Honor's clerk indicating -- I believe this was Wednesday, prior to the first date, this past Thursday when we had our first meeting -- indicating that the hearing date had been advanced from 9:30 to 8:30. And I had no order in my hand at that time indicating that there was a 9:30 hearing.

THE COURT: I wouldn't have the foggiest notion. I assume the record will indicate what service was made, hopefully, by the clerks and by anybody else.

MR. ROBINSON: We will rest our case at this time on the preliminary injunction relief.

THE COURT: Very well. We've been going for an hour. We'll take a little break here, and then we'll hear your motions and hear your testimony.

(Whereupon, the hearing was held in recess at 2:19 p.m. and subsequently reconvened at 2:30 p.m., and the following proceedings were had and entered of record:

THE COURT: Please be seated. We're ready. Do we have any motion?

MR. DUFFY: Your Honor, at this time, Construction & General Laborers Local 1334, Local 254, and Gene Fenderson would renew motions made before these proceedings began to dismiss the petition for injunction on grounds stated in our earlier motion and supported by the brief, that the matter is governed by 29 USC Section 35 in Norris-LaGuardia and that the requisite requirements of proof have not been proved by the Plaintiff in this case, notably sufficient proof that public officers and the state law enforcement arms are incapable or unwilling to furnish adequate protection.

I won't bore the Court with a lengthy oral argument, but the cases, among others that the Court cited, the Cimarron case and the like, Federal Express, Rochester Telephone, are all cited in our brief.

MS. LORING: On behalf of Pipeliners Local 798 and Ted Poole and Plumbers Local 41 and Mitch Mahailovich, we join in that motion.

THE COURT: Okay.

MR. HJORK: Again, Your Honor, on behalf of Local 400 Union of Operating Engineers and the individual defendants Mr. Burlingame and Mr. Mayes, we would also join.

MR. McKITTRICK: On behalf of Montana State AFL-CIO, we also join in that motion, and also the motion to dismiss this from the cause of action. As the Court recognized, Section 106 of the Norris-LaGuardia Act specifically indicates the awesome burden that is placed on the Plaintiff in order to have a case against the Defendants. There has to be clear proof of actual participation in or actual authorization of such acts or ratification of such acts after actual knowledge. Under the case law, this burden is more than proving by a preponderance of evidence, a little less than beyond a reasonable doubt, but it's clear and convincing proof.

We have on the record here before us today no proof at all -- in fact, all the proof to the contrary -- that the Montana AFL-CIO was involved in these allegations that are contained in the complaint. We also have before us the uncontradicted testimony that is attached to the affidavit in our motion, as well as by the testimony of Mr. Murry, that these locals and district councils are autonomous, and there's no governing responsibility for Montana AFL-CIO to these individuals.

We also indicate to the Court that the prerequisites of the Norris-LaGuardia Act have not been complied with, and I think the Court -- if I could just comment briefly on this question of if the local officials are unwilling to act in a particular circumstance. The testimony is clear that that burden has not been proven. But, more importantly, the burden is there for a particular public policy, and that really is the states rights versus federal involvement in a case such as alleged in this matter.

And as the testimony has clearly shown, the law enforcement officers have indicated that they were able, through a mutual and joint effort, having all the equipment at their disposal: sophisticated telex, the electronic devices;

all these -- the SWAT equipment of the deputized prison people, and as a backup the National Guard if it were needed. Clearly the burden has not been proven.

Also, I would address the Court to Section 108 of the Norris-LaGuardia Act, which indicates that "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of and available governmental machinery of mediation or voluntary arbitration."

These people did not come in with clean hands. They in fact had to have a temporary restraining order imposed upon them by a state district court, and for that additional reason we would ask this Court to dismiss Montana State AFL-CIO from this cause of action and grant to it the attorney fees and court costs.

THE COURT: I'll take all your motions under advisement. Let's go ahead. Let's hear the testimony, if any.

MR. DUFFY: Your Honor, after having heard all the testimony that was presented by the Plaintiffs in this case, my clients rest, or do not choose to present any at this point.

MR. HILLEY: Your Honor, on behalf of the Plumbers & Pipefitters, we don't have any witnesses either.

MR. HJORT: And, Your Honor, also on behalf of International Union of Operating Engineers Local 400 and the individual defendants Burlingame and Mayes, we have no defendant witnesses to present.

MR. McKITTRICK: Your Honor, Montana State AFL-CIO does not have any witnesses to put on at this time.

THE COURT: All right, we're through with testimony, then? I think we have briefs here, and, Mr. Robinson, you wish to --

MR. ROBINSON: I had just one final matter, Your Honor. Our U.S. Post Office return receipt requested documents indicate that Mr. Hillard has been served and was served in this action, and I think the records should show he has not appeared either in person or -- what I'm not certain, is Mr. Hjork representing Mr. Hillard as his counsel?

MR. HJORK: No.

MR. ROBINSON: I wasn't clear about that. So I think the record should show he's appeared neither in person or by counsel in this proceeding.

MR. DUFFY: May I inquire when he was served, or when your records show he was served?

MR. ROBINSON: May we have just one moment, Your Honor?

Your Honor, if I could show the Court the return receipt. There's a stamp that's not very legible, and it has a five, and then, above, 1983. I don't know if that purports to mean August 5th. There's a signature that I cannot decipher.

MR. DUFFY: This was served on Mr. Hillard on 1125

17th Street Northwest, Washington, D.C., signed for by a D. D. Omeda (phonetic), and it does indicate that it was received in that office at least on August 5th. It does not show that Mr. Hillard was served. There is a requirement of the Norris-LaGuardia Act, Your Honor, that does state that included in the requirements of justice and fair play in the seeking of injunctions and temporary restraining orders is that the notice be adequate, and especially adequate in time to allow the served party sufficient time to appear and seek counsel and present appropriate testimony. And I don't think that the record is clear that Mr. Hillard did in fact receive actual notice of these proceedings in such a way as to allow the Court to draw the implication that I think Plaintiff's counsel wants to put on it.

MR. ROBINSON: I might also state, Your Honor, that there's also a form under the new rules we are just experiencing, as I think all of us are, this new procedure about mailing under the new rule, and as of leaving for Great Falls, I do not think that our office had received any of those documents by return mail, indicating the service as of this time. But our limited experience so far indicates that that is not unusual.

THE COURT: Well, let me ask you, you do not move to dismiss any of your named defendants; you stand the way they're listed and served, however that is?

MR. ROBINSON: I think that we would like to consider and may file a motion or a notice to dismiss the Pipeliners Local 798. But I would like to have the opportunity to brief the questions that have been raised by the motions and raised by the entire hearing and the evidence, and if we feel it's appropriate, we might dismiss that local.

THE COURT: All right, that's kind of what I had in mind. I think Mr. Duffy's original motion maybe brings us into issue, and I don't know the answer. And you say Taft-Hartley. I don't believe, as stated by Mr. Duffy, that's exactly -- there must be some way out of that. And you say Taft-Hartley would apply as to where the -- we're talking here about diversity jurisdiction, right? And we're talking about complete diversity jurisdiction, so the testimony, as I hear it here, is these pipelines are out of Oklahoma. I don't really know.

But how many days do you want? I take it that you're in a hurry to get this, if you can get it. How much time do you want to get your brief in on these questions?

MR. ROBINSON: Well, I guess we probably need a week from today, if we could have it in a week from today.

THE COURT: All right, it's your choice. That is to say that today is Friday, the 12th, right? Do I have that right? I don't even know what year it is.

THE CLERK: Yes, it's the 12th. That would be the 19th, next Friday.

THE COURT: So it would be the close of business on the 19th; is that --

MR. ROBINSON: That would be fine, yes, Your Honor.

THE COURT: And then the Defendants will have the week following to the close of business on the 26th.

MR. DUFFY: Fine, Your Honor.

MR. McKITTRICK: Your Honor --

THE COURT: All right, and I will deem, then -- unless you want to extend some reply time. Do you?

MR. ROBINSON: May I request of the Court at the time? I'll just advise the Court if I need a couple, three days to reply.

THE COURT: All right. If you do, then, well, that will carry it through to the 31st? That's what you're asking for, right? All right. If you advise me, it will be deemed under advisement after I receive their briefing, which all defendants will be required to file in answer to your brief, but they all will be required to have it filed by the 26th.

MR. McKITTRICK: Your Honor, I have a time problem with the 26th. May I have an extension of time?

THE COURT: No, I don't see how. I think time is of the essence here. No, I think that that will be all the time we'll take.

Is there anything else that we should discuss here that we haven't talked about up until now? You've already discussed the things that I had in mind, so unless somebody has something additionally, the evidence is closed. And I'll be awaiting your briefs, and I'll attempt to rule as soon as I possibly can. We'll be working here also, as in fact we have been working. All right?

MR. ROBINSON: I do have the right to submit some documents to the Court regarding the disposition of the cases against the two individuals in Deer Lodge today; is that correct?

THE COURT: Yes.

MR. ROBINSON: Thank you, Your Honor. I appreciate the Court's time in this matter. Thank you.

THE COURT: That's all right.

(Whereupon, the hearing was recessed at 2:45 p.m.)

* * *

CERTIFICATE

STATE OF MONTANA)
: ss.
County of Ravalli)

I, John Wissenbach, RPR, Freelance Court Reporter for the State of Montana, residing in Hamilton, Montana, do hereby certify:

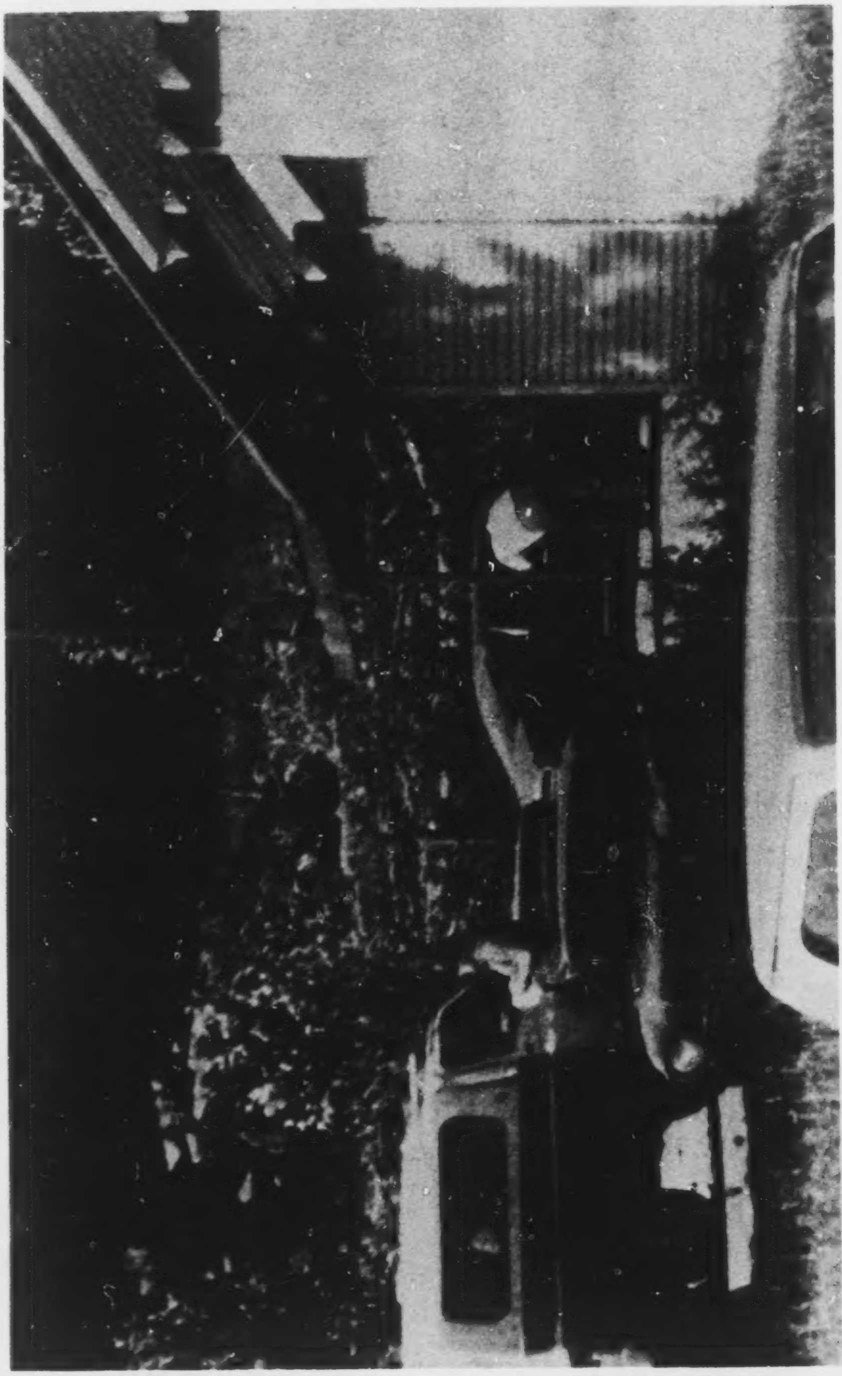
That I was duly authorized to and did report the testimony and evidence in the above-entitled cause.

I further certify that the foregoing pages of this transcript represent a true and accurate transcription of my stenotype notes.

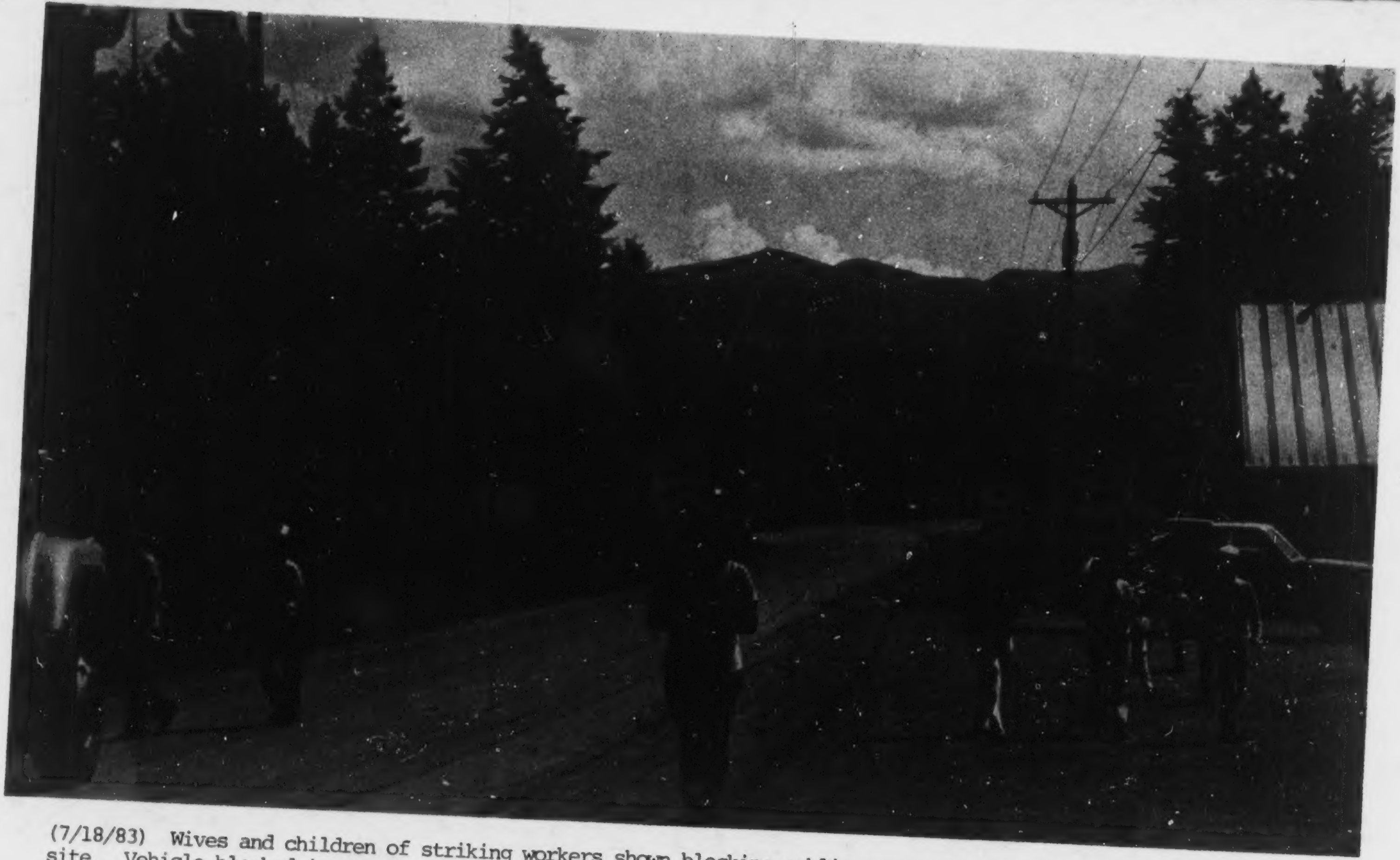
IN WITNESS WHEREOF, I have hereunto set my hand on this the 16th day of August, 1983.

John Wissenbach, RPR
Freelance Court Reporter,
State of Montana,
Residing in Hamilton, Montana.

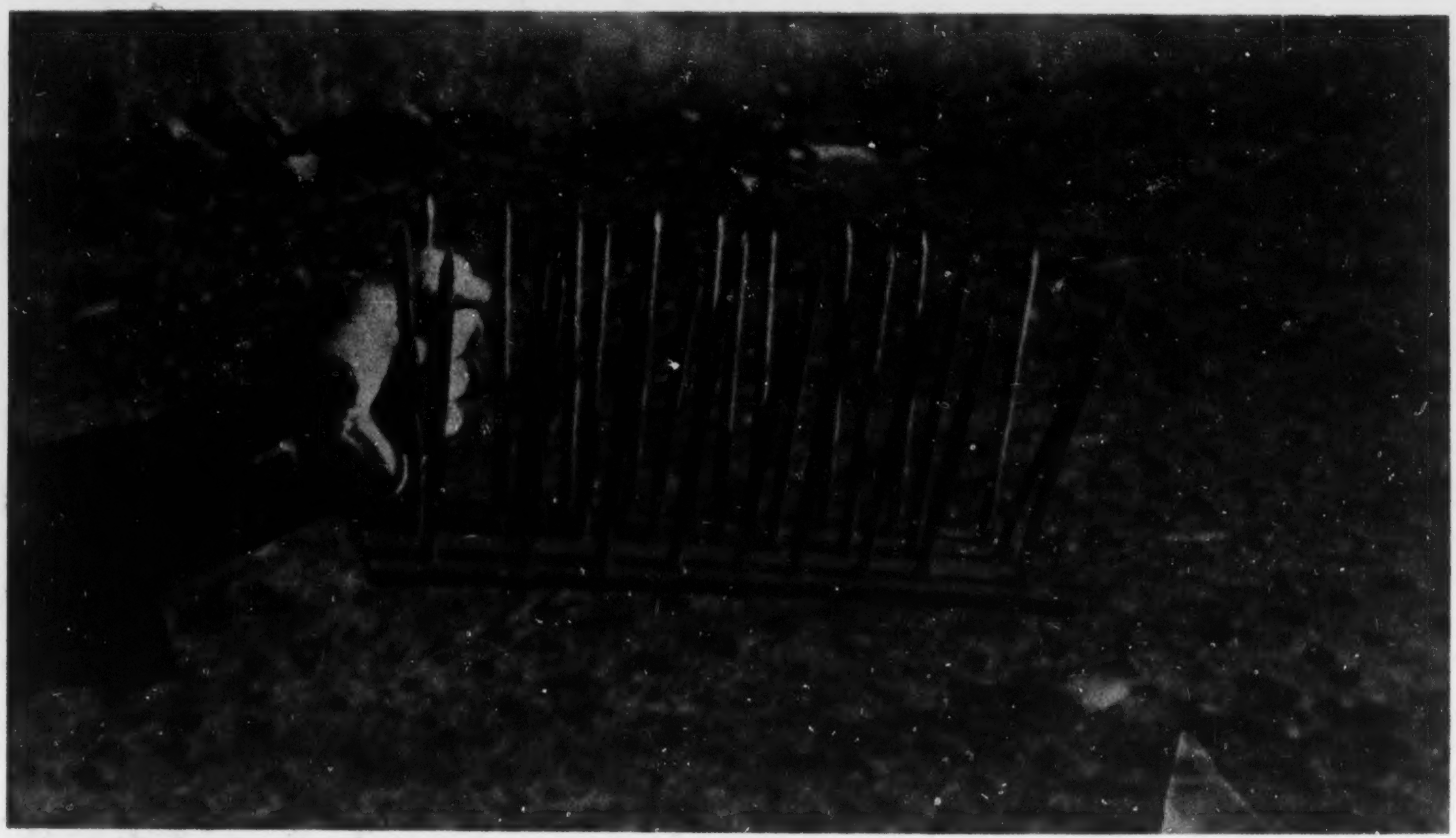
PART 4.—PHOTOS AND AFFIDAVITS



(7/26/83) Photograph shows Mr. Jessie Bell, III, Vice President of Local 3171, wearing a firearm on the picket line in defiance of court order. Photograph also shows police officers engaged in detached conversation.

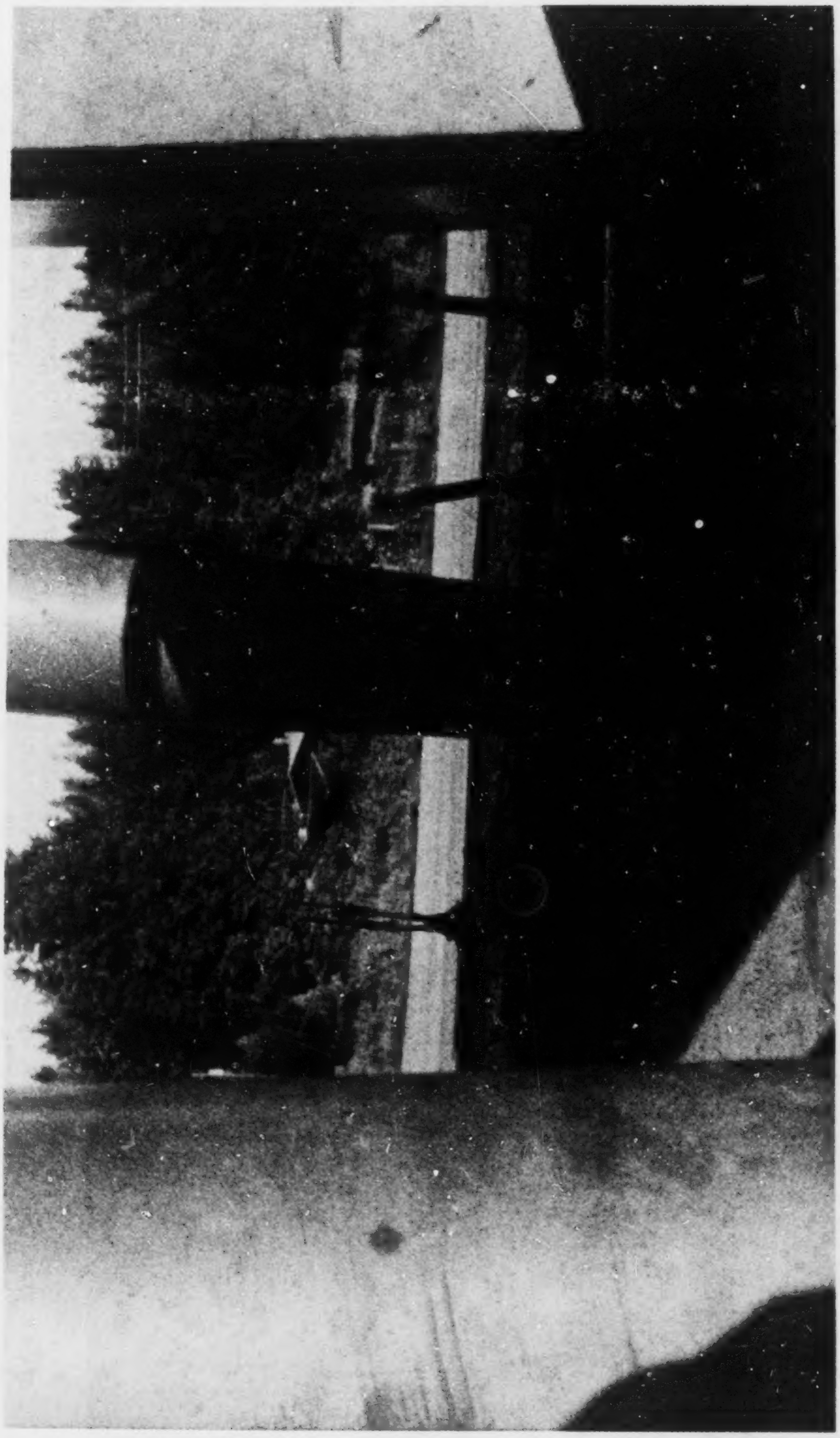


(7/18/83) Wives and children of striking workers shown blocking public roadway leading to Louisianna Pacific site. Vehicle blocked in this photograph is a common carrier.

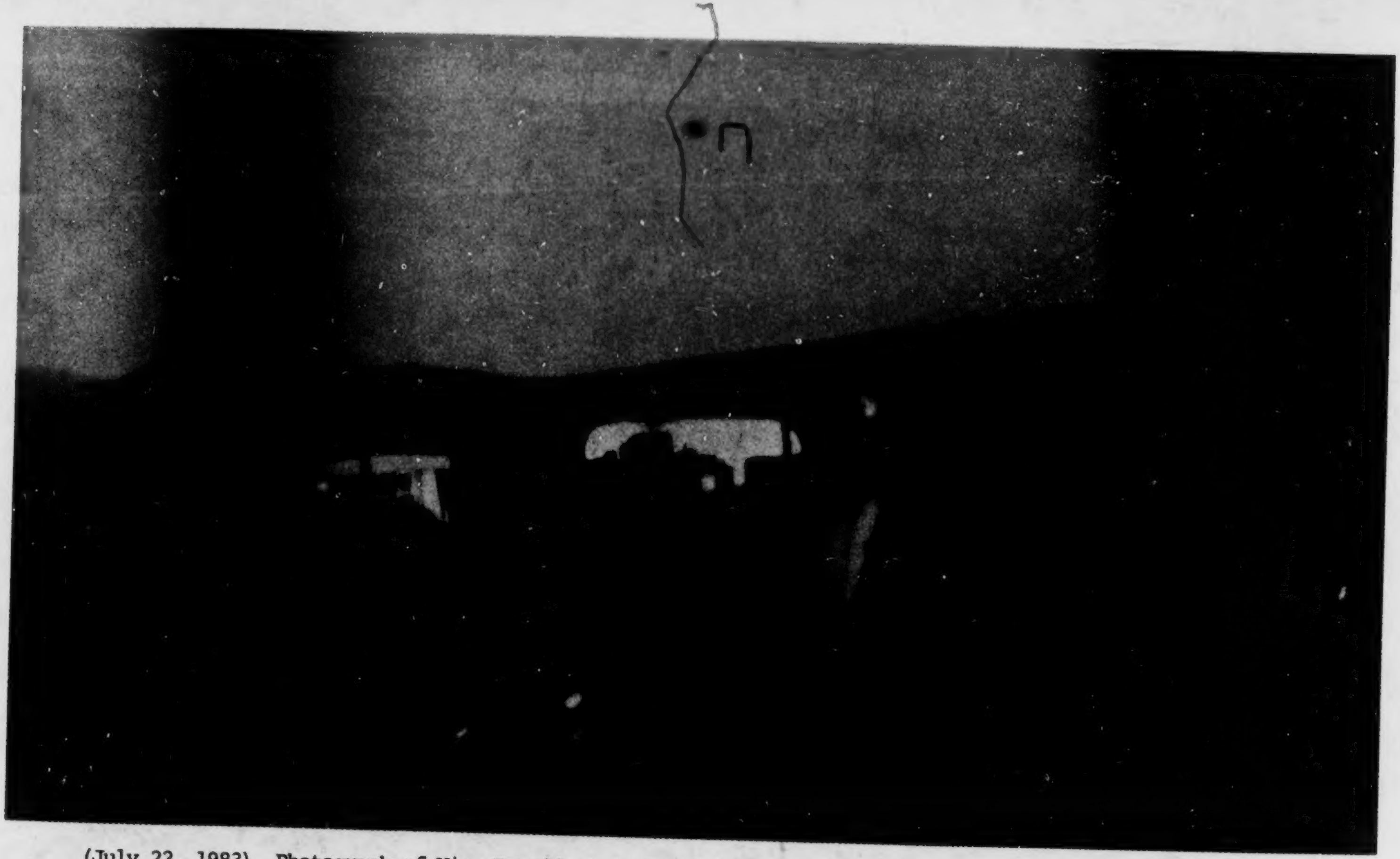


(9/26/83) Photograph shows Log Stacker tire puncturing device found concealed in log yard. Device has been painted brown and/or covered with mud to conceal it in the dirt covered yard. Device is among those referred to in testimony by Sheriff Smith and shown at hearing.

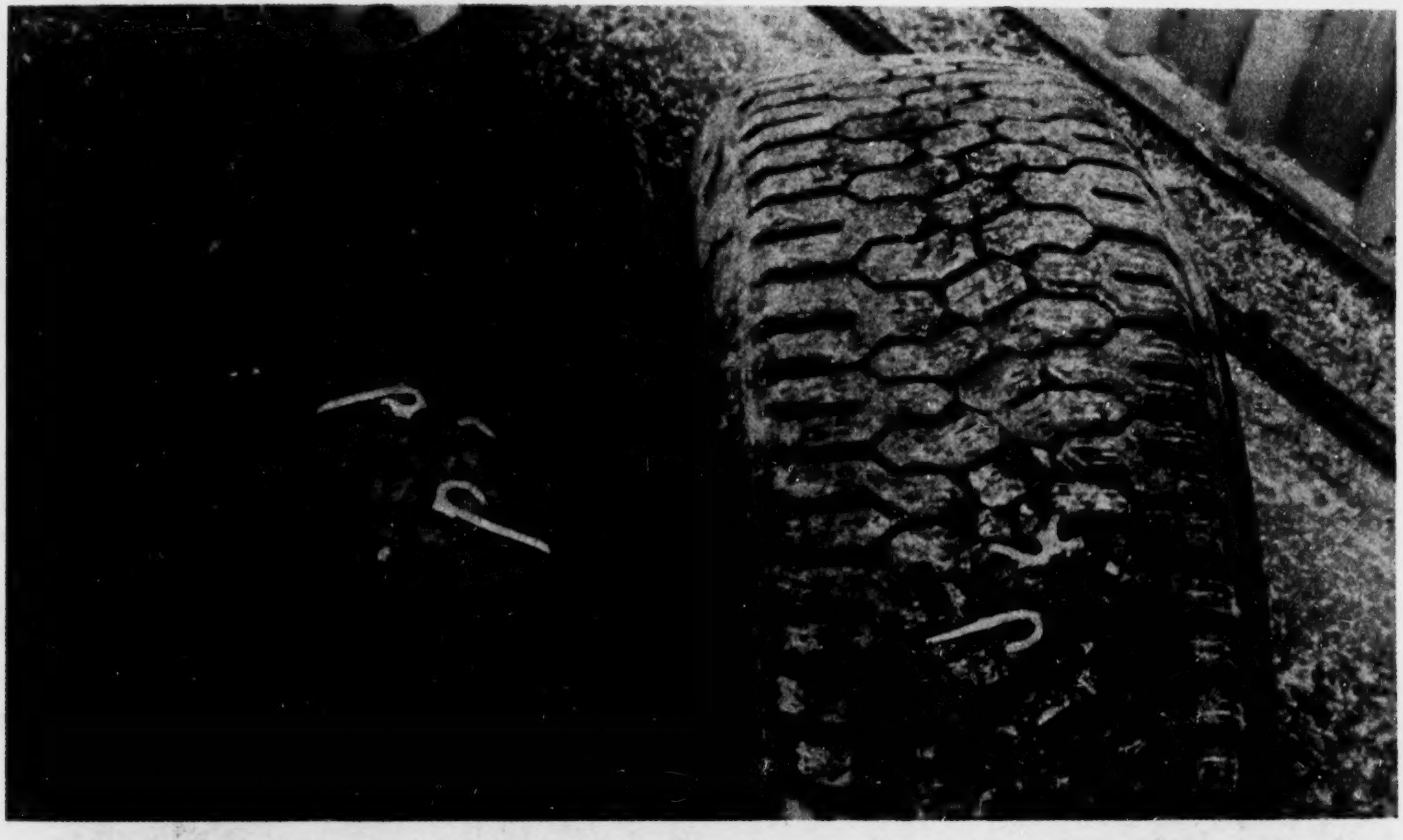
(9/29/83) Photograph shows union officers blocking entrance to Louisianna Pacific Company with their persons and automobiles. Log trucks could egress plant only at substantial risk of injury to persons and property of these officials. Officials in photograph are Mr. Jessie Bell, III, Vice President of Local 3117, LPIW and Mr. Billy Brothers, Executive Secretary of the Inland Emprie District Council.



(9/23/83) Photograph shows bullet hole in Log Stacker. Bullet caliber exceeds .30.

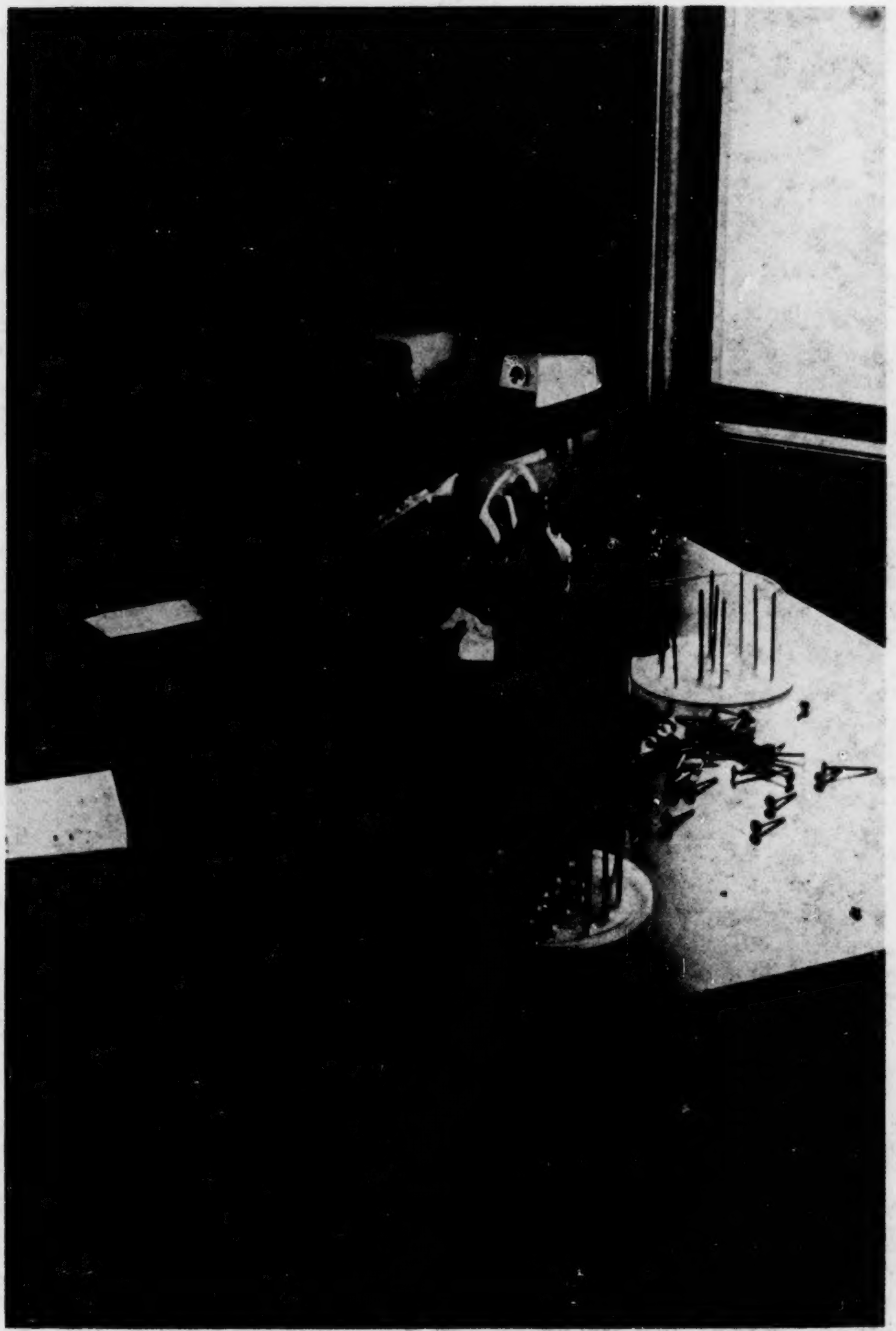


(July 22, 1983) Photograph of Vice President of Local 3117, Lumber Production Industrial Workers, AFL-CIO, Mr. Jessie Bell, III, throwing an object at non-striking employees of Louisianna Pacific Company.



(September 1983) Tire puncturing devices shown in truck and heavy equipment tires. These devices are referred to in the testimony of Sheriff Smith and Mike Ashby, both of Idaho.

(9/23/83) Photograph indicates bullet hole in engine of Log Stacker owned by Louisianna Pacific Company in Idaho.



(8/11/83) Photograph shows Molatov Cocktail devices and tire puncturing devices, including "frisbees" referred to in testimony by Sheriff Smith, recovered on mill site.

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO
83805
TELEPHONE 267-3127

STATE OF IDAHO
COUNTY OF [illegible]

'83 [illegible] 22 A8:[illegible]

[illegible]
BY: Sue Billingsley

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	CASE NO. 7465 AFFIDAVIT OF PHILIP FINLEY AND LILA FINLEY

STATE OF IDAHO)
) ss.
County of Boundary)

PHILIP FINLEY and LILA FINLEY, being first duly sworn, depose and say:

I.

I, Philip Finley, am an employee of Louisiana-Pacific, Moyie Division.

II.

On Tuesday night, August 16, 1983, at approximately five minutes to ten, right after the power went off, we got two phone calls. Lila answered the first call, Philip answered the second. No one spoke in reply to our answering the phone, the callers remained silent.

State of Idaho
County of Boundary } ss.
This is to certify that the foregoing is a true copy of the original now on file or record in this office.
NORMA J. ESTEP
Clerk of Dist. Court
Auditor & Recorder
By Sue Billingsley Deputy
8-26-83

III.

Immediately after that, as we stood near the street in front of our home, we could hear the cops hollering on the bull horns. Several vehicles were circling the block where we live. There are also three other people who work at Louisiana-Pacific, living in the same area. One pickup stopped, harrassing a guard. One vehicle came back across the railroad tracks, with another vehicle behind it. I recognized Larry Pruitt and Jeff Schauble as drivers of those vehicles as they went around again. I also recognized Burton Baker, who had his wife in the pickup, as he went around the block three times. Jim Thompson also drove past in Wyman's ~~[illegible]~~ pickup.

P.F.
L.F

IV.

At one point, Jeff Schauble stopped his vehicle near the corner where the City of Moyie Springs has a shop building, and parked there quite awhile. Philip called the plant manager, Chris Paulson, to caution him about the vehicle being parked there and suggested he have a security guard check on it.

V.

Sometime during the night, one or two o'clock, Larry Pruitt called. He asked if we were home, then said, "We'll be right down."

VI.

During the night, while the power was off and we were in darkness, vehicles continued to circle slowly around the area. At one point, they pulled into the yard of a neighbor, also an L-P employee, and played a floodlight on his house.

Loud mufflers and the noise they make when crossing the railroad tracks is disturbing, and the presence of the vehicles is intimidating and frightening. We do fear for our safety. We do not want to be burned alive in our trailer house.

VII.

Philip called the cops after the first two phone calls.

VIII.

At approximately 9;15 a.m., Wednesday, August 17th, Lila answered the phone and recognized the voice of Burton Baker, who said, "You're welcome, you damm scab."

IX.

Since we went back to work approximately ten days ago, we have been receiving three or four phone calls a night, always with no one responding to our answer. Sunday night, August 14th, was the only night there were no phone calls.

SUBSCRIBED and sworn to before me this 31st day of August, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

[illegible]
ATTORNEYS AT LAW
[illegible]

STATE OF IDAHO
COUNTY OF BOUNDARY

'83 AUG 22 A8:0

CLERK
BY: Sue Billingsley
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
-vs-) AFFIDAVIT OF
) CHERYL ECONOMU
WESTERN DISTRICT COUNCIL, LUMBER,) AND STEVE ECONOMU
PRODUCTION & INDUSTRIAL WORKERS,)
et al.,)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

STEVE ECONOMU and CHERYL ECONOMU, being first duly sworn, depose and say:

I.

The following persons have subjected our family and us to harrassment as they drive by our home in Moyie Springs, Idaho. They drive by at an excessively reduced speed, sometimes stopping; and yelling, at times, intimating threats of physical harm. Some have been identified by neighbors as they pull into our driveway and back out when we aren't home. This has happened almost nightly since late July, 1983. We can identify:

State of Idaho
County of Boundary } ss
This is to certify that the foregoing is a true copy of the original now on file or record in this office.
NORMA J. ESTEP
Clerk of Dist. Court
Auditor & Recorder
By Sue Billingsley Deputy
8-26-83

Jesse Bell III, a union member;
Claude Mueller, union member;
Mrs. Claude Mueller, wife of Claude Mueller;
Mr. [redacted]. Burton Baker, union member;
Britt Hamilton, union member;
Jeff Schauble, union member;
Ellen Glen, union member;
Steve Heath, union member.

II.

The harrassment we have received has been a frightening experience for our three children, ages 10, 8 and 5. The youngest wakes at night crying because "the mean people are here."

III.

On August 11, 1983, at 2:15 a.m., the tires on our blue and white 1973 Chevy Blazer, license number 9B 6642, were all slashed. At the same time, the windshield, door glass on the driver's side, and rear quarter panel window on the driver's side were broken out.

IV.

During the late night and early morning hours of August 10-11, 1983, our home was patrolled by numerous cars belonging to union members. At one time a car stopped in front of our home and we heard voices say, "I think he lives right there." Those were the only words we could be positive of understanding correctly. Also, during the night we could hear loud screaming coming from the picket lines as we only live a short distance away. Firecrackers were being set off. During the night a brother-in-law saw a red and white Chrevrolet pickup turn into our driveway at least twice. He got dressed and came to our home and sat on the front lawn for approximately one-half hour in hopes that the pickup would return. He left my yard at approximately 2:00 a.m. At 2:15 a.m., at least two persons did the above described damage to our Blazer; at that time we saw at least two male Caucasians leaving our yard at a run.

V.

Also, during that same night, Louisiana-Pacific received substantial damage to their office and mill site. The office was damaged by breaking out two large windows and spraying portions of the building with paint. There were two street lights broken out in the parking lot, and a railroad car loaded with chips was set on fire and another was derailed.

VI.

Numerous other people who work at the mill have also been harrassed by phone calls and rocks being thrown at their homes. On the morning of August 11, two employees had rocks thrown at their vehicles by union members on the picket line as they were going to work. One received a broken rear window and the other a broken windshield.

VII.

With all the violent action of the union members on the morning of August 11th, we are certain that the things that happened to us were done by union members. We feel intimidated almost to the point of violence by all the actions of the union members and their insinuated threats.

Steve Economou

Cheryl Economou

SUBSCRIBED and sworn to before me this 14 day of August, 1983.

Roberta
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
-vs-)
) AFFIDAVIT OF
WESTERN DISTRICT COUNCIL, LUMBER,) BILL R. GUICE
PRODUCTION & INDUSTRIAL WORKERS,)
et al.,)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

BILL R. GUICE, being first duly sworn, deposes and says:

I.

That affiant is a security officer of the Watson Security Agency, which has a contract of service to the Louisiana-Pacific Plant, Moyie Division.

II.

That at approximately 7:30 p.m. on August 31, 1983, affiant did personally observe Ken MacDonald drink a 12-ounce can of Budweiser beer while on the ten-man picket line at the Louisiana-Pacific Plant, Moyie Division.

SUBSCRIBED and sworn to before me this _____ day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al.,

Defendants.

CASE NO. 7465

AFFIDAVIT OF BILL R. GUICE

STATE OF IDAHO)
) ss.
County of Boundary)

BILL R. GUICE, being first duly sworn, deposes and says:

I.

That affiant is a security officer of the Watson Security Agency, which has a contract of service to the Louisiana-Pacific Plant, Moyie Division.

II.

That at approximately 7:30 p.m. on August 31, 1983, affidant did observe Magnus Schwalick use a sling-shot on at least two occasions; on one occasion the result was an object striking the main office of the Louisiana-Pacific Plant, Moyie Division, and in the other instance, the object

------

broke a window in the main office.

Bill R. Guice

SUBSCRIBED and sworn to before me this ______ day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

BOUNDARY COUNTY SHERIFF'S OFFICE

SUPPLEMENTARY REPORT

Page 1

DATE

INVESTIGATING OFFICER

NAME OF COMPLAINANT

Bill Guice

08/31/83, Wednesday, approximately 19:30 hours the undersigned who is employed by the Watson Security Agency and currently working security for the L-P mill at Moyie Springs was positioned in the main L-P office doing surveilance on striking L-P workers.

The surveilance was necessitated by the recent acts of vandalism, rock throwing, and harassment by striking L-P workers. The undersigned was observing the picket site at the main highway entrance to the L-P mill. At this time there were seven (7) male subjects at this site. Only two (2) were known to the undersigned, that being Ken MacDonald and a older male named Les. Subject MacDonald along with another male (unknown name) were seated on the tailgate of a Ford pickup. MacDonald and the unknown male were consuming Budwiser beer in 12. oz. cans. This was noted by the undersigned on several occasions. Attempts to photograph this violation of the restraining order (Stipulation C) failed due to problems with the camera.

The undersigned returned to the security office for a short time. However returned to the main office approximately 20:35 hours. Undersigned continued surveilance of the picket line with 7x50 Jason binoculars. At this time there were nine (9) male subjects. Only one (1) was known to the undersigned, that being Jesse Bell.

While observing these subjects through the 7x50 binoculars, one male was noted to go to a small pickup (light yellow, Chevy Luv or Ford Couier). This male was taller (approximately 6'3" - 6'4") than any other persons present. Subject also wore glasses, no hat, and was wearing a Army type coat. Subject then re-joined the main group.

Approximately 5 minutes later this male was noted to raise a sling-shot at approximately 45° angle toward the L-P mill and release. Subject then placed the sling-shot in his right coat pocket. Approximately 10 minutes passed when the same male walked to the rear of a white over dark, Ford sedan, crouch, raise the sling-shot and realease. The projectile struck the front of the main office which I occupied. At this time the undersigned called the Boundary County Sheriff's office to report the incident. While undersigned was talking on the phone to the Boundary County Sheriff's office dispatcher, this same male was noted to raise the sling-shot and again release. Undersigned heard glass shatter and an solid object bounce around the main office. Boundary County Sheriff's office was notified as undersigned was still talking to the dispatcher.

Officer Dave Kramer of Bonners Ferry Police Dept. made contact with the undersigned at the security office. Undersigned with Officer Kramer drove to the picket site.

The male subject whom undersigned had observed shooting the sling-shot was still present. This subject was pointed out to Officer Kramer. Officer Kramer made contact with this [illegible] was placed under arrest by undersigned.

The window broken by the projectile was the west office door window. Officer Dale Sorenson of Boundary County Sheriff's office investigated the incident.

Bill R. Guice

Bill Guice, Security

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7441
)
-vs-) AFFIDAVIT OF GLORIA BOWERS
)
[illegible] DISTRICT COUNCIL, LUMBER,)
PRODUCTION & INDUSTRIAL WORKERS,)
et al.)
)
Defendants.)

STATE OF IDAHO)
) ss.
COUNTY OF BOUNDARY)

GLORIA BOWERS being first duly sworn, deposes and says:

I.

That affiant is an employee of an agent of plaintiff.

II.

That at approximately 1:00 o'clock a.m., August 5, 1983, at the mill site of plaintiff's mill in Moyie Springs, Idaho, affiant observed Jesse Bell III with a flare gun, and did observe Jesse Bell III fire the flare gun in the direction of affiant.

/s/
Notary

SUBSCRIBED and sworn to before me this 5 day of August, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,
a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER,
PRODUCTION & INDUSTRIAL WORKERS,
et al.

Defendants.

CASE NO. 7441

AFFIDAVIT OF TRICIA ECKERT

STATE OF IDAHO)
) ss.
COUNTY OF BOUNDARY)

TRICIA ECKERT, being first duly sworn, deposes and says:

I.

That affiant is an employee of an agent of plaintiff.

II.

That at approximately 1:00 o'clock a.m., August 3, 1983, at the mill site of plaintiff's mill in Moyie Springs, Idaho, affiant observed Jesse Bell III with a flare gun, and did observe Jesse Bell III fire the flare gun in the direction of affiant.

/s/

SUBSCRIBED and sworn to before me this 5 day of August, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff,	CASE NO. 7441
-vs-	AFFIDAVIT OF MIKE ASHBY
WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al. Defendants.	

STATE OF IDAHO } ss.
COUNTY OF BOUNDARY }

MIKE ASHBY, being first duly sworn, deposes and says:

I.

That affiant is an employee of plaintiff of Louisiana-Pacific a lumber mill operated at Moyie Springs, Idaho.

II.

That affiant knows that Don Sappington is an officer of Local #3171 of the Lumber, Production & Industrial Workers, to-wit: president.

III.

That on August 5, 1983, at the south gate by the log yard of plaintiff's mill in Moyie Springs, Idaho, affiant observed [illegible] pick up a large rock and heave it at the pick-up [illegible], striking the vehicle on the side.

/s/ ______________________

SUBSCRIBED and sworn to before me this 5 day of [illegible], 1983.

/s/ ______________________
Notary Public for Idaho
Residing at Bonners Ferry

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,
a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER,
PRODUCTION & INDUSTRIAL WORKERS,
its PRESIDENT, JIM BLEDSOE and its
OTHER OFFICERS JOHN DOES 1 THROUGH
3; INLAND EMPIRE DISTRICT
COUNCIL, LUMBER, PRODUCTION &
INDUSTRIAL WORKERS, its EXECUTIVE
SECRETARY, BILLY H. BROTHER, and
its OTHER OFFICERS, JOHN DOES 1
THROUGH 3; LOCAL UNION NO. 3171
OF LUMBER, PRODUCTION & INDUSTRIAL
WORKERS and its OFFICERS DON
[illegible], PRESIDENT, JESSIE
[illegible], III, and JOHN DOES 1 and 2,
and BILL BURGESS, GUY PATCHEN,
C. B. [illegible]TON, CLAUDE [illegible]LER,
[illegible], RODNEY KEMMIS,
[illegible] PATTERSON, TERRY JOHNSON,
AND JOHN DOES 1 THROUGH 163 OF
SAID LOCAL AND EMPLOYEES OF
PLAINTIFF.

Defendants.

CASE NO. 7441

AFFIDAVIT OF JOE TOLAR

STATE OF IDAHO)
) ss.
County of Boundary)

JOE TOLAR, being first duly sworn, deposes and says:

1.-----

I.

That affiant is the Personnel Manager of Louisiana-Pacific's lumber mill operated at Moyie Springs, Idaho.

II.

That affiant knows that Ray Webb is a member of Local [illegible] of the Lumber, Productions & Industrial Workers.

III.

That on July 26, 1983, at the south entrance to Louisiana-Pacific's plant in Moyie Springs, Idaho, affiant observed [illegible] Ray Webb performing picket duty, and while so conducting [illegible] carrying a dangerous weapon consisting of a bow and arrows, there being no target practice area or other recreational [illegible] the use of such weapon in the immediate area.

/s/

SUBSCRIBED and sworn to before me this 4th day of [illegible] 19[illegible].

/s/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

WILSON & WALTE
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO
83805
TELEPHONE 267-3127

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff,	CASE NO. 7465
-vs	
WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	AFFIDAVIT OF BILL R. GUICE

STATE OF IDAHO)
) ss.
County of Boundary)

BILL R. GUICE, being first duly sworn, deposes and says:

I.

Attached hereto as Exhibit A, and made a part hereof as the fully set forth at length herein, is my report for the period 9/26/83 @ 1825 hours through 9/26/83 @ 2030 hours.

Bill R. Guice

SUBSCRIBED and sworn to before me this _____ day of October, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

September 26, 1983
Wednesday, 1930 hours

I, Bill R. Guice, am currently employed by Watson Security Agency, which is employed by contract with Louisiana Pacific, Moyie Springs Division.

On 9-26-83 Monday, 1825 Hrs. I was in the security office at the L.P. mill. At this time I was looking out the office window when I observed a yellow chrysler station wagon know to belong to Jesse Bell III. West bound on Railroad Avenue the vehicle was traveling at a high rate of speed. By the use of 7x50 field glasses I observed this vehicle pull into and stop at the far west entrance to the L.P. mill. The vehicle did not cross over the railroad tracks. The vehicle was then noted to accelerate rapidly backwards in a cloud of dust and proceed east on Railroad Avenue. The vehicle was moving in excess of 50 m.p.h. creating a large cloud of dust the full length of Railroad Avenue as the vehicle went past the front area of the security office. The driver of said vehicle was noted to be Jesse Bell III. Bell at this time drove to the picket site in front of the L.P. main office and stopped.

At approximately 1835 Hrs. Bell was again noted to come from the west end of Railroad Avenue proceeding east. Again Bell was noted to be driving at a very fast rate of speed and in a reckless manner, showering rocks and dust the full length of Railroad Avenue to the front picket site. Bell then drove east on old Hyw. 2 and out of sight.

9-26-83 Monday, approximately 1840 Hrs., I was contacted at the security office by Tom Simonson, also an employee of Watson Security. Simonson advised me that Bell was out of his vehicle on the east side of the mill and had just made threats against his life.

Tom Simonson and I drove toward the far east portion of the L.P. mill. As we approached old Hwy. 2 Bell's vehicle was noted to be parked on old Hwy. 2 facing the railroad crossing. As we came closer, Bell was observed to be walking on the paved portion of L.P. property. Bell, upon seeing us approaching immediately left L.P. property and walked up the embankment onto old Hwy. 2 as we neared Bell (approx. 40 yds), Bell bend down and picked up a large chunk of asphalt in his right hand.

I exited the pickup and advised Bell that he was trespassing on L.P. property. Bell, still holding the asphalt chunk began making throwing motions with the asphalt and shouting "come on mother fucker". Bell's disposition can only be described as a "rage". Bell continued to threaten myself with the asphalt chunk and repeatedly made threats on my life. Bell pointed toward Simonson and shouted "I'll get you, you little mother fucker". Bell continued to make threats on my life and called me names. Such as, cock sucker, mother fucker, son of a bitch, ignorant bastard and referred to my wife as a fucking whore. Bell on numerous occassions made statements as "you've had it mother fucker, I'll get you, I'll get you."

Bell either seeing or hearing Boundary County officer, Richard Martin, approaching in his patrol unit dropped the asphalt chunk, however, continued to challenge me to come up to the roadway (old Hwy. 2) and fight.

Office Martin exited his patrol unit and was able to overhear several threats made toward me by Bell. Bell entered his vehicle and drove off slowly, continuing his threats on my life.

After Bell's departure the large asphalt chunk was retrieved by myself to be kept as evidence.

During this incident, neither Tom Simonson or myself had any weapons or impliments that could have been used for our self defense.

9-26-83, Monday, 2030 Hrs.

Bill R. Guice
Security

September 26, 1983

1825: Was on regular patrol of L.P. mill when I did observe Jesse Bell coming to side road in front of mill heading to the west entrance of the mill, I followed him (Jesse) to the entrance & parked the vehicle & sat. About 2 minutes passed & Jesse Bell got in his car & came to the far east entrance of the mill. I drove down to the east end of mill, by the time I got there, he (Jesse Bell) was standing by his car. I patroled once & stopped (while patroling the once) Jesse Bell did in fact wave his arms at me and did verbally tell me to come over there (By him) all the while calling me mother fucker & son of a bitch. I then stopped & watched Jesse Bell. He then told me to get out of the pickup and said come here you son of a bitch and I'll break your fucking neck. At that time I went back and told Bill Guice (Security office) at 1840 Hrs. we drove back and did observe Jesse Bell trespassing on L.P. property. We drove up and did observe Jesse Bell pick up a large piece of asphalt and he then swung it at us. Jesse Bell did tell Bill to come up there you cock sucker, ignorant bastard, etc., all the while swinging the asphalt. Jesse Bell did keep waving his arms saying come up and arrest me, mother fucker, so on, so on ...., about 1855 I noticed Deputy Rich Martin drive up and get out of his pickup (Patrol). All the while I was listening to Jesse Bell tell Bill Guice his day was coming, Jesse then got in his car and drove off saying you will see me again, your day is coming.

Thomas Simonsen
L.P. Security

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
-vs-)
)
WESTERN DISTRICT COUNCIL, LUMBER,) AFFIDAVIT OF
PRODUCTION & INDUSTRIAL WORKERS,) THOMAS SIMONSEN
et al.,)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

THOMAS SIMONSEN, being first duly sworn, deposes and says:

Attached hereto as Exhibit A, and made a part hereof as the fully set forth at lenth herein, is my report for the period 9/26/83 @ 1825 hours through 9/26/83 @ 2030 hours.

Thomas Simonenn

SUBSCRIBED and sworn to before me this____day of October, 1983.
O

Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
-vs-)
) AFFIDAVIT OF
WESTERN DISTRICT COUNCIL, LUMBER,) B. L. AUWEN
PRODUCTION & INDUSTRIAL WORKERS,)
et al.,)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

B. L. AUWEN, being first duly sworn, deposes and says:

I.

That I am an employee of the Watson Agency, which has a security control contract with Louisiana-Pacific, Moyie Springs Division.

II.

That the Jesse Bell III referred to in Exhibit A, which is attached hereto, is a member of Local 3171 of the Lumber, Production & Industrial Workers, Western District Council.

III.

That any other members referred to in said Exhibit A are, unless otherwise identified, members of said Local 3171.

IV.

That attached hereto as Exhibit A and made a part hereof as though fully set forth at length herein is my report of the activities of September 3, 1983; said report being an actual resume of my observations.

B. L. Auwen

SUBSCRIBED and sworn to before me this 8th day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

B. L. Auwen
Watson Agency
September 2, 1983

2240 Setting in back of plant watching the transformer and back cliff area I heard several hard objects strike the old random length building behind me. I moved several times and the objects still seemed to be following me whereever I was. I walked over to the office near the boiler room, while going to report to Rocky Watson, and had 2 projectiles nearly strike me. I went back through the doorway of candy machine building and met up with Don Johnson, who told me he saw J. Bell launch something with a sling shot. I phoned Rocky Watson and informed him. During this time I continued to hear hard objects hit the boiler room and other buildings, including near where I was.

2340 pickets at west end yelling, "hey you son of a bitch, Come on over you cock suckers."

0010 Heavy blast coming from the front of the mill. I went to the front of the mill, and smelled a substance that smelled like Pyrodex (imitation black powder). I saw no physical damage. I saw a few (unknown number of vehicles) leaving the picket area in great haste.

Sheriff's Office shows up with the Idaho State Police. I, Fred Bowers and Rocky Watson found numerous "ninja nails", small styrofoam balls, painted black with fence staples stuck in them under the sawdust bins near Railroad car by the blast area.

On 3 September,1983, myself and J. Shepard, watched the evidence and crime scene at the I.P. mill located at Moyie Springs to insure that the area was secure and untouched. This surveillience started after the blast and lasted until about 715 on September [illegible], 1983. Nothing had changed or had been moved.

AFFIDAVIT

STATE OF IDAHO)
) ss.
County of Boundary)

CHRIS PAULSON, being first duly sworn, deposes and says:

I.

On September 7, 1983, I was returning from a business trip to my home (which is located on the Louisiana-Pacific, Moyie Springs plant site) in my company vehicle. I entered the plant site through the front main entrance at approximately 10:00 p.m. and observed approximately five vehicles belonging to L.P.I.W. strikers at this entrance.

II.

As I neared my home, my vehicle began to swerve toward the Moyie Canyon. I regained control and stopped. I got out of my vehicle and observed that my right rear tire was rapidly going flat. I drove the remaining 200 feet to my home and more closely inspected the flat tire. I discovered two palmated fence staple devices protruding from the flat tire. I took a flash-lantern and walked towards the front main entrance where on numerous occasions I have picked up nails and roofing tacks. I knew that Bill Guise was on duty in the office and had the area in full view. I was aware that chip and shavings trucks, as well as non-striking employees were due through the main entrance at anytime. I was also aware that I would be in full view of a security guard located in the front main office as I searched the entrance for nails and staples.

III.

As I traversed the entrance looking for tire puncturing devices, a striker's vehicle turned its bright lights on me for approximately 15 seconds. This vehicle was parked perpendicular to Old Highway 2. Jesse Bell got out of a vehicle and said something which was inaudible. As Jesse Bell approached me, approximately 50 feet from the shoulder of Old Highway 2 and on what

I believe is Louisiana-Pacific property, he said something else inaudible. I turned to him and advised him that I was out in this area to pick up nails and staples. He told me to "Get out of here." I replied that I intended to pick up all the nails I could find at this entrance and he "would have to do what he had to do." I continued my search for approximately 30 seconds adjacent to the picket station and then started to traverse the entrance back towards the main office. Mr. Bell, the only picketer outside of a vehicle, continued to talk inaudibly. Midway back to the office, approximately 75 feet from the picket station, Mr. Bell yelled, "You better get back to your scab friends or ---." I made no response and continued to look for devices as I made my way back to the office.

IV.

I went into the office and advised the head of security, Mr.— Mr. Bill Guise, that in my view the situation was volatile and significant property damage was inevitable without police protection. Mr. Guise told me he had called the sheriff's office approximately one and a half hours earlier and requested a deputy to no avail. I instructed him to call Mr. Ron Smith, the Boundary County Sheriff, at home and explain the gravity of the situation to him. Mr. Smith assured Mr. Guise that a deputy would be dispatched immediately. I retired for the evening.

Chris Paulson

SUBSCRIBED and sworn to before me this _____ day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	CASE NO. 7465 AFFIDAVIT OF FRED BOWERS

STATE OF IDAHO)
) ss.
County of Boundary)

FRED BOWERS, being first duly sworn, deposes and says:

I.

That I am an employee of the Watson Agency, which has a security control contract with Louisiana-Pacific, Moyie Springs Division.

II.

That the Jesse Bell III referred to in Exhibit A, which is attached hereto, is a member of Local 3171 of the Lumber, Production & Industrial Workers, Western District Council.

III.

That any other members referred to in said Exhibit A are, unless otherwise identified, members of said Local 3171.

-IV.

IV.

That attached hereto as Exhibit A and made a part hereof as though fully set forth at length herein is my report of the activities of September 3, 1983; said report being an actual resume of my observations.

/s/

Fred Bowers

SUBSCRIBED and sworn to before me this 5th day of September, 1983.

s/

Notary Public for Idaho
Residing at Bonners Ferry

Fred Bowers
Watson Agency
September 3, 1983

2315 I walked north across the railroad tracks and stood beside a box car and observed Jessie Belle using a wrist rocket to propell objects towards the L.P. buildings and security personnel. I saw Jessie Belle doing this 26 times before I stopped counting

2350 I returned to the loading dock area

2358 I observed one picketer go towards and reach box car under chip loading equipment on railroad. I observed picketer return to picket line a couple of minutes later.

2608 While using binoculars 7X50 power I observed a picketer leave the picket line and cross railroad tracks. Between two box cars he lighted and threw an object which exploded on the road located on L.P. property next to the railroad tracks.
All the vehicles and people at the picket lines were union or relatives of union people

Fred Bowers

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	CASE NO. 7465 AFFIDAVIT OF JAMES E. BLAIN

STATE OF IDAHO)
) ss.
County of Boundary)

JAMES E. BLAIN, being first duly sworn, deposes and says:

I.

That I am an employee of the Watson Agency, which has a security control contract with Louisiana-Pacific, Moyie Springs Division.

II.

That the Jesse Bell III referred to in Exhibit A, which is attached hereto, is a member of Local 3171 of the Lumber, Production & Industrial Workers, Western District Council.

III.

That any other members referred to in said Exhibit A are, unless otherwise identified, members of said Local 3171.

IV.

That attached hereto as Exhibit A and made a part hereof as though fully set forth at length herein is my report of the activities of September 3, 1983; said report being an actual resume of my observations.

/s/
James E. Blain

SUBSCRIBED and sworn to before me this 7th day of September, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

James E. Blain
Watson Agency
September 3, 1983

I worked the keys up until about 2200 hrs. I started the roving detail at 2200 hrs. At about 2240 I observed Jessie Belle arrive at the pickett post west of the Louisiana Pacific main office. Mr. Belle was driving a yellow station wagon. Jessie Belle was in the vehicle by himself. During my driving between the log deck on the west side of the mill and the random leight planer I observed Mr. Belle and two other male persons shooting projectiles at the boiler and the moving L.P. trucks. Also Mr. Belle was making obcene gestures and yelling "asshole and fuckers" when I drove by him. I was approximately 35 feet from him when I drove by him. At 2348 I observed a violation of the court order restricting only four persons being at the picket point west of the main office. I observed five persons on the picket point and reported this fact to Rocky Watson, my supervisor. At 2358 I observed a male subject run to the railroad chip car from the picket point and return. I was standing at the door way of the loading dock during my break while this happened. The street light was on and the distance from my station to the railroad chip car is 90 yard approximately. The subject was at the railroad chip car for approximately 60 seconds. At 0002 I observed a brownish station wagon pull up to the point of pickets west of the main office. About 3 or 4 males got out of the station wagon and joined the rest of the picketers. There were approximately 10 picketers at the picket point. At 0010 I observed a bright flash of light and heard a loud explosion.

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
-vs-) AFFIDAVIT OF
) GLORIA BOWERS
WESTERN DISTRICT COUNCIL, LUMBER,)
PRODUCTION & INDUSTRIAL WORKERS,)
et al.,)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

GLORIA BOWERS, being first duly sworn, deposes and says:

I.

That I am an employee of the Watson Agency, which has a security control contract with Louisiana-Pacific, Moyie Springs Division.

II.

That the Jesse Bell III referred to in Exhibit A, which is attached hereto, is a member of Local 3171 of the Lumber, Production & Industrial Workers, Western District Council.

III.

That any other members referred to in said Exhibit A are, unless otherwise identified, members of said Local 3171.

IV.

That attached hereto as Exhibit A and made a part hereof as though fully set forth at length herein is my report of the activities of September 3, 1983; said report being an actual resume of my observations.

Gloria Bowers

SUBSCRIBED and sworn to before me this 15 day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

Gloria Bowers
Watson Agency
September [illegible], 1985

2130 I was with [illegible] Johnson on the log deck west of the mill when I saw Jessie Bell drive up to the west picket site. He and another man got out of the car and started to walk down the tracks behind the scale shack. Jessie Bell continued down the tracks walking west. When he got close the second man hid in the bushes. Jessie Bell stood on the tracks for about 10 minutes then walked back to his car at the picket point. I passed him going west when a rock hit the back of the truck. Jessie then drove east alone. We never saw the second man [illegible].

2230 I was on the loading dock when a small yellow colored car pulled up to the picket station across from the box cars. He kept putting his bright lights on the loading dock.

2235 approximately I was walking to the boiler when a lead [illegible] hit the building about 15' from me. I saw the object bounce on the ground. I picked it up. I looked across the street. There were 4 picketers across from me at the picket station across from the box cars. I gave the lead ball to Rocky Watson.

2240 I was with Fred Bowers at the boiler when Jessie Bell pulled up to the picket station. Shortly after he and other [illegible] started hitting the boiler alot of [illegible]. A [illegible] truck pulled up. J. Shepard was driving. He got out and I drove the truck past Jessie and others. A rock hit the [illegible] of the truck I was driving.

2300 Approximately I was in the log deck when a small white pickup pulled up to picket station at the far west. I was parked on the dock. He parked and kept his bright lights on us for about [illegible] minutes. He then pulled out and went east.

2330 approximately I was driving from log deck to the loading dock office. I drove in front of the picket station across from the box cars. Jessie Bell and four other picketers [illegible] and made [illegible] gestures at me. I was alone with my dog.

2410 approximately I was walking on the loading dock when I heard a large explosion with a bright flash at the west end of the mill. I was at the east end of the dock. The picketers started to yell and all but a few left the picket station.

2415 approximately I heard yelling from the picketers at the west picket station. A woman was yelling "you son of a bitch, cock suckers," etc. She yelled that over and over.

0230 approximately A small yellow car backed up in front of the main office by the tracks. He, the driver, got something out of his trunk and then went to the east picket line. He blinked his lights then sped off.

0320 approximately Subject, male, walking east on tracks. He walked past the east picket line to the stop sign. He turned right and walked on the road by the lumber yard where I lost site of him.

0405 The same yellow car returned to the tracks and backed in. The male driver yelled something at Hutch Auwen and J. Shepherd. I was standing by the boiler.

0410 The yellow car left the track area and returned to the picket line by a the main L.P. office.

Gloria Bowers

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff,	)	CASE NO. 7465
-vs-	)	AFFIDAVIT OF DON JOHNSON
WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	)	

STATE OF IDAHO)
) ss.
County of Boundary)

DON JOHNSON, being first duly sworn, deposes and says:

I.

That I am an employee of the Watson Agency, which has a security control contract with Louisiana-Pacific, Moyie Springs Division.

II.

That the Jesse Bell III referred to in Exhibit A, which is attached hereto, is a member of Local 3171 of the Lumber, Production & Industrial Workers, Western District Council.

III.

That any other members referred to in said Exhibit A are, unless otherwise identified, members of said Local 3171.

------

IV.

That attached hereto as Exhibit A and made a part hereof as though fully set forth at length herein is my report of the activities of September 3, 1983; said report being an actual resume of my observations.

/s/
Don Johnson

SUBSCRIBED and sworn to before me this 5th day of September, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

Don Johnson
Watson Agency
September 3, 1983

On September 3, 1983, at approximately 2200 hrs I saw Jessie Bell, wearing blue jeans and a light colored t-shirt with a billed hat white in the front and dark colored in the back standing behind his station wagon which was located west of the main office. I saw Jessie Bell launch with a sling shot (or wrist rocket) 45 to 50 caliber lead balls and steel ball bearings. I saw him do this twice. One of the balls which I saw thrown almost hit Butch Auwen who was at the candy machine shack.

At 2230 approximately I was on the loading dock after talking with Rocky Watson. A light colored smaller vehicle shined its lights on the dock. The lights would go out and then come back on several times.

At approximately 2410 hours I saw an explosion at the west end (close by the train cars) and heard a large blast. There was smoke. I was then at the east end of the loading dock. At this time I was advised by Rocky Watson to call the Boundry County Sheriff's office. I did so. All the cars at the picket point left except for 2 cars and 4 male persons. Shortly after the 4 picketers were screaming and yelling obscene things and making abscene gestures.

Donald R. Johnson

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al.,

Defendants.

CASE NO. 7465

AFFIDAVIT OF JERALD SHEPHERD

STATE OF IDAHO)
) ss.
County of Boundary)

JERALD SHEPHERD, being first duly sworn, deposes and says:

I.

That I am an employee of the Watson Agency, which has a security control contract with Louisiana-Pacific, Moyie Springs Division.

II.

That the Jesse Bell III referred to in Exhibit A, which is attached hereto, is a member of Local 3171 of the Lumber, Production & Industrial Workers, Western District Council.

III.

That any other members referred to in said Exhibit A are, unless otherwise identified, members of said Local 3171.

IV.

That attached hereto as Exhibit A and made a part hereof as though fully set forth at length herein is my report of the activities of September 3, 1983: said report being an actual resume of my observations.

Jerald Shepherd

SUBSCRIBED and sworn to before me this 8th day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

Jerald Shepherd
Watson Agency
September 3, 198[illegible]

2337 I was sitting on a cat walk above the stud planer when I observed Jessy Bell and others outside their vehicles. There were 4 vehicles all together. I could see Bell shooting objects out of a wrist rocket. After about 15 to 20 minutes of watching Bell shoot his wrist rocket, he (Bell) proceeded to open the passenger door of his car and pull a box across the seat to allow easy access through the window. He later reached through the window and took something out. He handed something to another man standing next to him then proceeded to get more. Bell and the unknown man walked towards some railroad cars where I lost site of them for a couple of minutes. Then they returned to their cars.

2345 I walked to the office on the loading dock and remained there until the explosion and flash happened at approximately 2410. I walked out of the door way and saw the smoke rolling over the saw dust bin.

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
vs-)
) AFFIDAVIT OF
WESTERN DISTRICT COUNCIL, LUMBER,) MARVIN VIG
PRODUCTION & INDUSTRIAL WORKERS,)
et al.,)
)
Defendant.)

STATE OF IDAHO)
) ss.
County of Boundary)

MARVIN VIG, being first duly sworn, deposes and says:

I.

That I am an employee of the Watson Agency, which has a security control contract with Louisiana-Pacific, Moyie Springs Division.

II.

That the Jesse Bell III referred to in Exhibit A, which is attached hereto, is a member of Local 3171 of the Lumber, Production & Industrial Workers, Western District Council.

III.

That any other members referred to in said Exhibit A are, unless otherwise identified, members of said Local 3171.

IV.

That attached hereto as Exhibit A and made a part hereof as though fully set forth at length herein is my report of the activities of September 3, 1983; said report being an actual resume of my observations.

Marvin Vig

SUBSCRIBED and sworn to before me this 7th day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

Marvin Vig
Watson Agency
September 3, 1983

1800 I was stationed in the top of the mixing bin for the boiler. From my location to the west picket line is about 140 feet.
2240 Jessey Bell who was alone parked his car in front of the 1st chip cart across the street from me. He parked near the west picket line joining a yellow Datsun or Toyota car and a couple of other people. Mr. Bell started shooting objects out of the sling shot from behind his car. He was shooting at the boiler at first and then started shooting all over. He continued this for about 45 to 50 minutes. At first there were only two cars, Jessey's and a little Toyota or Datsun, then as time progresses more rigs showed up at around 2350 there were a total of 10 to 11 people out there in that one west picket station There seemed to be 5 or 6 vehicles there at any one time. Around 2345 I saw Jessey and another man after Jessey reach in his car and pick up something and then they both walk west down the road together and disappear behind another chip car and then re-appeared back by Jessey's car a few minutes later. They then all stood by the cars and talked for about 15 to 20 minutes. During this time another car drove up to the picket station and the female in the car got out with a sack and gave it to one of the picketers. I then saw Jessey walk to the driver's side of his vehicle and he bent down to pick up something or so it looked like that is what he was doing . Then he walked west down the road again by himself and disappeared behind the chip cart and a minute or so went by and then I heard the explosion. Then Jessey walked back to his car and took off driving east. Two or three cars left just before him driving east. The police showed up and everything started to settle down.

I recoginized Jessey Bell by the description I had been given by other Watson Agency Employees. Mr. Bell was using his yellow full size station wagon. I was observing the above stated facts through the use of field glasses. The street light was on and visibility was moderate. From where Jessey was parked to where I could not see him behind the chip cart is about 95 feet.

Marvin Vig 9/4/83

MICHELLE J. SILAS
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO
83805
TELEPHONE: 267-3127

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff,	CASE NO. 7465
vs	
WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	AFFIDAVIT OF ROCKY WATSON

STATE OF IDAHO)
) ss.
County of Boundary)

ROCKY WATSON, being first duly sworn, deposes and says:

I.

That I am an employee of the Watson Agency, which has a security control contract with Louisiana-Pacific, Moyie Springs Division.

II.

That the Jesse Bell III referred to in Exhibit A, which is attached hereto, is a member of Local 3171 of the Lumber, Production & Industrial Workers, Western District Council.

III.

That any other members referred to in said Exhibit A are, unless otherwise identified, members of said Local 3171.

IV.

That attached hereto as Exhibit A and made a part hereof as though fully set forth at length herein is my report of the activities of September 3, 1983; said report being an actual resume of my observations.

Rocky Watson

SUBSCRIBED and sworn to before me this ______ day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

Rocky Watson
Watson Agency
September 3, 1983
Louisiana Pacific Mill, Movie Springs

The following report was writen as the events happened and observed from the office located on the west end of the loading dock which is approximately 375 feet from the west picket station and chip car loader.

2013 Everything had been relatively quiet on the picket line. It is a clear nite with little or no over cast. Butch Auwen is in the boiler area, Jim Blain is working the keys, Marvin Vig is in the tower, Don Johnson is roving, J. Shepard is in the log deck, Jeff Benjamin will start the keys at 2200, Fred Bowers is in the boiler area, and Gloria Bowers is in the log deck. Jessie Bell III's car arrived at the picket station directly in front of the I.P. mill office, shortly there after hard air born objects started hitting the boiler house.

2240 approximately Jessie Bell III's car departs and rock throwing stops.

2230 small light colored foreign car arrives at the picket station west of the mill office with his lights out and positions his auto so his lights will shine on the loading dock. He intermittenly turns his lights on and off.

2240 Jessie Bell III's car arrives at the west picket site and rocks start hitting the boiler house; B. L. Auwen reports in from the boiler house that he is nearly hit and the projectiles are varied caliber lead balls. At the time Don Johnson reported in from the loading dock that he(Don Johnson) saw Jessie Bell III throw that last object. Jessie was standing behind his auto at the time.

2315 Lead balls continue to strike objects in the mill about ever 15 or 30 seconds. There are 4 autos at the picket station directly in front of the office, due to the distance and lighting a head count is not possible. The street light is out again. Another dark sedan arrives at the picket station to the west of the mill office where Jessie Bell III is located.

2325 Another auto arrives at the picket site in front of the L.P. mill office and there is alot of yelling and howling on the picket line which is keeping the neighborhood dogs barking. The lead balls have stopped being thrown.

2330 The dark sedan left the west picket location

2337 Two men left the picket location to the west LP mill office and walk in the shadows over to the chip cars and then return to the picket location

2340 Two men again left picket location and walked to the chip cars. The LP pickup driven by guard for the Watson Agency drove west making it's rounds and some one at picket location yelled in a loud clear voice "You son of a bitch, come over you cock suckers". The small light colored foreign car left and returned at 2350 when the auto pulled up I could clearly see 4 pickets and 2 more got out of the foreign car for a total of six.

2358 While standing on the loading dock using a pair of 7X50 field glasses I observed 8 pickets, three with open cans of beer, one man ran over to the chip car and back.

2402 Late model station wagon arrived with a picketer carrying cans of beer, for a total of ten pickets.

2405 Light colored datsun type pickup arrived. Total of 13 pickets, 6 with open beer. My count was assisted by Fred Bowers.

2410 Very large blast from west end of the plant. All the pickets started cheering and yelling. All but 4 pickets jumped in their cars and left, leaving 4 picketers and 2 cars.

George Hicks of the Idaho State Police arrived followed by a Bonners Ferry city officer and the Boundry County Deputy. Within a few minutes, Ron Smith, Boundry County Sheriff, arrived and it was agreed between Sheriff Smith and myself that the Watson Agency would guard the blast site until daylight. At that time his office would take charge of the blast site and conduct an investigation.

0600 9-4-83 I Rocky Watson picked up numerious styrofoam balls containing several horseshoe nails and painted flat black around the perimeter of the blast site. I bagged the balls and marked as evidence.

I kept the bags containing the styrofoam balls in my personal control until turning it over to a Boundry County Deputy on the morning of September 4, 1983. On September 4, 1983 the Boundry County Sheriff's Office took charge of the blast site.

Rocky Watson

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO
83805
TELEPHONE 267-3137

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
-vs-)
)
WESTERN DISTRICT COUNCIL, LUMBER,) AFFIDAVIT OF
PRODUCTION & INDUSTRIAL WORKERS,) MIKE ASHBY
et al.,)
)
Defendants.)

STATE OF IDAHO)
)ss.
County of Boundary)

MIKE ASHBY, being first duly sworn, deposes and says:

I.

The rock referred to in the 9/27/83 affidavit of Chris Paulson struck a steel support on the log stacker with such force that the rock shattered. Before striking the steel support, it flew by my head, missing me by less than six inches.

Mike Ashby

SUBSCRIBED and sworn to before me this ______ day of October, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO
83805
TELEPHONE: 267-3197

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,)
Plaintiff,)
-vs-)
WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al.,)
Defendants.)

CASE NO. 7465

AFFIDAVIT OF
CHRIS PAULSON

STATE OF IDAHO)
) ss.
County of Boundary)

CHRIS PAULSON, being first duly sworn, deposes and says:

I.

That affiant is the manager of the Moyie Division of the Louisiana-Pacific Corporation.

II.

That at approximately 5:30 p.m. (PDT) on September 30, 1983, affiant was observing the company employee driving a log stacker past the main entrance of the plant. At that time and place, one Francis Jones, known by affiant to be a member of Local #3171, did pick up a rock and hurl it at the driver of the log stacker, Mike Ashby. ~~with such force that when it struck a stanchion the rock shattered. The rock missed the head of the driver by inches.~~

III.

Francis Jones was in a group and others in the group were Charlie Denton, Wyman Thompson, and Rick Crawford, all of whom are known to affiant to be members of Local #3171.

IV.

Also in the group was Billy Brothers, known by me to be an officer of the Inland Empire District Council, Lumber, Production & Industrial Workers. Mr. Brothers was within five feet of Francis Jones at the time of the rock throwing and made no effort to prevent the incident, but remained standing there within arm's length. None of the others in attendance attempted to prevent Francis Jones from throwing the rock.

C. Paul

Chris Paulson

SUBSCRIBED and sworn to before me this [illegible] day of September, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO
83805
TELEPHONE: 267-3127

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its PRESIDENT, JIM SLEDSO and its OTHER OFFICERS JOHN DOES 1 THROUGH 3; INLAND EMPIRE DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its EXECUTIVE SECRETARY, BILLY H. BROTHER, and its OTHER OFFICERS, JOHN DOES 1 THROUGH 3; LOCAL UNION NO. 3171 OF LUMBER, PRODUCTION & INDUSTRIAL WORKERS and its OFFICERS DON SAPPINGTON, PRESIDENT, JESSIE BELL, III, and JOHN DOES 1 and 2, and BILL BURGESS, GUY PATCHEN, O. B. HAMILTON, CLAUDE MUELLER, KEN MacDONALD, RODNEY KEMMIS, JIM PATTERSON, TERRY JOHNSON, and JOHN DOES 1 THROUGH 163 OF SAID LOCAL AND EMPLOYEES OF PLAINTIFF,

Defendants.

Case No. ______

AFFIDAVIT

OF TOM MACKEY

STATE OF IDAHO)
) ss.
County of Boundary)

TOM MACKEY, being first duly sworn, deposes and says:

I.

Affiant observed defendant Jessie Bell interfere with and bother and attempt, with his vehicle, to impede a lumber truck attempting to leave plaintiff's yeard on July 12, 1983.

DATED this 13 day of July, 1983.

/s/ ______________________

SUBSCRIBED and sworn to before me this 13 day of July, 1983.

/s/ ______________________
Notary Public for Idaho
Residing at Bonners Ferry

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,
a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its PRESIDENT, JIM BLEDSO and its OTHER OFFICERS JOHN DOES 1 THROUGH 3; INLAND EMPIRE DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its EXECUTIVE SECRETARY, BILLY H. BROTHER, and its OTHER OFFICERS, JOHN DOES 1 THROUGH 3; LOCAL UNION NO. 3171 OF LUMBER, PRODUCTION & INDUSTRIAL WORKERS and its OFFICERS DON SAPPINGTON, PRESIDENT, JESSIE BELL, III, and JOHN DOES 1 and 2, and BILL BURGESS, GUY PATCHEN, O. B. HAMILTON, CLAUDE MUELLER, KEN MacDONALD, RODNEY KEMMIS, JIM PATTERSON, TERRY JOHNSON, and JOHN DOES 1 THROUGH 103 OF SAID LOCAL AND EMPLOYEES OF PLAINTIFF.

Defendants.

CASE NO. 2941

AFFIDAVIT OF
JOE TOLAR

STATE OF IDAHO)
) ss.
County of Boundary)

JOE TOLAR, being first duly sworn, deposes and says:

I.

Affiant is the Personnel Mgr of the plaintiff's plant at Moyie Springs, Idaho.

Affiant has observed some of the defendants make taunting and slurring remarks at various officers and employees of the plaintiff as they were entering plaintiff's said plant.

III.

Defendants have demanded that independent contractors remain away from the millsite.

IV.

Defendants have intimidated and threatened plaintiff's employees by virtue of their mass number and the nature of their hostile actions.

V.

On at least one occasion, by the use of vehicles, some of the defendants have interfered with a common carrier lumber truck hauling lumber from plaintiff by using agressively intimidating driving on the Moyie River bridge, a bridge that soars some 484 feet above the Moyie River bed.

VI.

At least one officer and member of said local has been at the picket site with a pistol strapped to his side;

VII.

On the evening of July 12, 1983, using vehicles, some of the defendants surrounded a southbound vehicle of plaintiff as it travelled on U.S. Highway 2 and 95 near Bonners Ferry, Idaho. These defendants did then intinidate the driver and occupant of plaintiff's vehicle by forcing it to slow down and prohibiting plaintiff's vehicle from passing by veering across both lanes to block plaintiff's vehicle from passing.

VIII.

On the morning of July 13, 1983, as salaried employees of plaintiff were convoying to work under the protection of law enforcement personnel, some twenty vehicles operated by various members of defendant appeared and by aggressive and intimidating tactics forced all vehicles to slow down while creating a highly dangerous highway hazard.

IX.

On July 12, 1983, some of the defendants threw rocks at the scale shack endangering the personnel and property located there.

X.

Threats have been made by some of the defendants to burn the home of plant manager, Chris Poulson.

XI.

On at least one occasion (on or about July 9, 1983), as affiant is informed, believes and therefore states the fact to be, a representative from the Union organization's Portland headquarters appeared at a meeting of said local, and, after reciting how a vehicle had been destroyed recently in a labor dispute in Oregon, urged the local members "to be imaginative."

XII.

As to Paragraphs V. VI, and IX, affiant's information is from reports from other plant personnel.

DATED this _____ day of July, 1983.

____

SUBSCRIBED AND SWORN to before me this ____ day of July, 1983.

____
Notary Public for Idaho
Residing at Bonners Ferry

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,)
)
-vs-)
)
WESTERN DISTRICT COUNCIL, LUMBER,)
PRODUCTION & INDUSTRIAL WORKERS,)
its PRESIDENT, JIM BLEDSO and its)
OTHER OFFICERS JOHN DOES 1 THROUGH)
3; INLAND EMPIRE DISTRICT)
COUNCIL, LUMBER, PRODUCTION &)
INDUSTRIAL WORKERS, its EXECUTIVE)
SECRETARY, BILLY H. BROTHER, and)
its OTHER OFFICERS, JOHN DOES 1)
THROUGH 3; LOCAL UNION NO. 3171)
OF LUMBER, PRODUCTION & INDUSTRIAL)
WORKERS and its OFFICERS DON)
SAPPINGTON, PRESIDENT, JESSIE)
BELL, III, and JOHN DOES 1 and 2,)
and BILL BURGESS, GUY PATCHEN,)
O. B. HAMILTON, CLAUDE MUELLER,)
KEN MacDONALD, RODNEY KENNIS,)
JIM PATTERSON, TERRY JOHNSON,)
and JOHN DOES 1 THROUGH 163 OF)
SAID LOCAL AND EMPLOYEES OF)
PLAINTIFF.)
)
Defendants.)

Case No. ________

AFFIDAVIT OF

CHRIS POULSON

STATE OF IDAHO)
) ss.
County of Boundary)

CHRIS POULSON, being first duly sworn, deposes and says:

I.

Affiant is the manager of the plaintiff's plant at Moyie Springs, Idaho.

4

II.

Affiant has observed some of the defendants make taunting and slurring remarks at various officers and employees of the plaintiff as they were entering plaintiff's said plant.

III.

Defendants have demanded that independent contractors remain away from the millsite.

IV.

Defendants have intimidated and threatened plaintiff's employees by virtue of their mass number and the nature of their hostile actions.

V.

6 On at least one occasion, by the use of vehicles, some of the defendants have interfered with a common carrier lumber truck hauling lumber from plaintiff by using agressively intimidating driving on the Moyie River bridge, a bridge that soars some 484 feet above the Moyie River bed.

VI.

7 At least one officer and member of said local has been at the picket site with a pistol strapped to his side;

VII.

7 On the evening of July 12, 1983, using vehicles, some of the defendants surrounded a southbound vehicle of plaintiff as it travelled on U.S. Highway 95 south of Bonners Ferry, Idaho. These defendants did then intimidate the driver and occupant of plaintiff's vehicle by forcing it to slow down and virtually driving it off the highway. As a result, damage was done to plaintiff's vehicle by one of defendant's vehicles.

VIII.

On the morning of July 13, 1983, as salaried employees of plaintiff were convoying to work under the protection of law enforcement personnel, some twenty vehicles operated by various members of defendant appeared and by aggressive and intimidating tactics forced all vehicles to slow down while creating a highly dangerous highway hazard.

IX.

On July 12, 1983, some of the defendants threw rocks at the scale shack endangering the personnel and property located there.

X.

Threats have been made by some of the defendants to burn the home of plant manager, Chris Paulson.

XI.

On at least one occasion (on or about July 9, 1983), as affiant is informed, believes and therefore states the fact to be, a representative from the Union organization's Portland headquarters appeared at a meeting of said local, and, after reciting how a vehicle had been destroyed recently in a labor dispute in California, urged the local members "to be imaginative."

XII.

On July 13, 1983, some of the defendants barricaded Old U.S. Highway #2, now a paved county road within themmunicipality of Moyie Springs, with vehicles and the defendants' bodies to prevent plaintiff, its agents, personnel and customers from entering the plan site; and this action is also impeding the use of the road by the general public.

XIII.

The incidents referred to in Paragraphs V, VI, VII, IX, and XI are based on statements given,affiant by mill personnel and/or independent contractors.

DATED this _____ day of July,

CHANGE

____

SUBSCRIBED and sworn to before me this _____ day of July, 1983.

____
Notary Public for Idaho
Residing at Bonners Ferry

PETER F. WILSON
WILSON & WALTER
P.O. Box 749
Bonners Ferry, ID 83805

BROWN, KEANE, BOYD & GIBLER, P.A.
P.O. Box 659
Kellogg, ID 83837
Phone: (208) 784-110[illegible]

Attorneys for Plaintiff

TRUE COPY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,	)	Case No. 7441
Plaintiff	)	AFFIDAVIT OF CHRIS PAULSON
vs.	)	
WESTERN DISTRICT COUNSEL, LUMBER PRODUCTION AND INDUSTRIAL WORKERS, et al	)	
Defendants.	)	

STATE OF IDAHO)
) ss.
County of Boundary)

CHRIS PAULSON, being first duly sworn, deposes and says:

I.

That affiant is the Plant Manager of the Louisiana-Pacific mill operated at Moyie Springs, Idaho.

II.

While the restraining order has been very effective, nevertheless there have been cases of violation of that restraining order. Since the effective date of the restraining order, there has been at least one criminal complaint filed for illegal conduct by a union member, and at least two contempt citations have been filed.

Some of the acts of violence are as follows:

1) There have been several instances of some of the defendants, directly or indirectly blocking and otherwise preventing plaintiff and plaintiff's agents and suppliers from entering and leaving the premises.

2) There have been several instances of some of the defendants impeding lumber trucks on the highway.

3) There have been acts of intimidation done by some of the defendants as shown by one of the contempt proceedings on file.

4) On the evening of July 25, 1983, one of the defendants appeared at the plant with a handgun strapped to his side; and it is known that this defendant purchased handgun ammunition at a local store on or about July 18, 1983.

5) A truck of one of the current log hauling agents of plaintiff was shot while it was parked by the bedroom window of that agent's baby.

6) A new employee got up after the first day of her employment and found the tires on her car slashed and the vinyl roof on her car slit with a knife in several places.

7) At the plant, while an employee was leaving work and while he was driving his pick-up past some of the defendants, a rock was hurled, smashing the window of the pick-up and striking the employee in the head, causing lacerations.

8) There have been numerous instances of egg throwing and orange throwing at the entrance to the mill with the recipients being employees of plaintiff. These items have emerged from a crowd of defendants.

2. AFFIDAVIT OF CHRIS PAULSON

9) There is a bar within 75 yards of the main office of the lumber company, and some of the defendants regularly congregate there at. On July 27, 1983, missiles from rift rockets were fired from the doorway of that bar at a security vehicle of plaintiff as it drove by.

10) On July 27, 1983, a rock was hurled, smashing the window in the main office; and nails were thrown on the pavement in the chip truck loading area.

11) On July 26, 1983, a rock was hurled through the scale shack window.

12) Attached as an exhibit is the front page of this week's Bonners Ferry Herald, which further shows the continuing violence problems.

13) There are numerous other incidents, examples of which are on the Sheriff's log.

III.

Your affiant concurs in the report of the Spokesman-Review published July 27, 1983, where it is stated that both union officials and management officials agreed that the restraining order has been effective in holding down excessive violence.

DATED this 28th day of July, 1983.

s/ Chris Paulson
Chris Paulson

Subscribed and sworn to before me this 28th day of July, 1983.

s/ Roberta Behm
Notary Public for Idaho
Residing at Bonners Ferry

I hereby certify that a true copy of the foregoing affidavit was mailed, regular mail, postage prepaid, to Steven C. Verby, 202 S. 1st Avenue, Sandpoint, Idaho, 83864, attorney for defendants, this 28th day of July, 1983.

s/ Roberta Behm
Secretary

---

4. AFFIDAVIT OF CHRIS PAULSON

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO
83805
TELEPHONE: 267 3127

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,
a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its PRESIDENT, JIM BLEDSOE and its OTHER OFFICERS JOHN DOES 1 THROUGH 3; INLAND EMPIRE DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its EXECUTIVE SECRETARY, BILLY H. BROTHER, and its OTHER OFFICERS, JOHN DOES 1 THROUGH 3; LOCAL UNION NO. 3171 OF LUMBER, PRODUCTION & INDUSTRIAL WORKERS and its OFFICERS DON SAPPINGTON, PRESIDENT, JESSE BELL III, VICE-PRESIDENT, and JOHN DOES 1 and 2, and BILL BURGESS, GUY PATCHEN, O. B. HAMILTON, CLAUDE MUELLER, KEN MacDONALD, RODNEY KEMMIS, JIM PATTERSON, TERRY JOHNSON, and JOHN DOES 1 through 103 OF SAID LOCAL AND EMPLOYEES OF PLAINTIFF; AND IN THEIR INDIVIDUAL CAPACITIES THE FOLLOWING: DON SAPPINGTON, JESSE BELL III, RAY WEBB, JAMES PATTERSON and TERRY JOHNSON,

Defendants.

CASE NO. ________

AFFIDAVIT OF RON SMITH

STATE OF IDAHO)
) ss.
County of Boundary)

RON SMITH, being first duly sworn, deposes and says:

I.

Affiant is the duly appointed, qualified, and acting Sheriff of Boundary County, Idaho, the County in which the Moyie Division, Louisiana Pacific Corporation, plant is located.

II.

Affiant states the fact to be that the public officials charged with the duty to protect Louisiana-Pacific's property have failed to do so, and, alone are unable to furnish adequate protection.

III.

Affiant believes that control could be had if there were a restraining order.

IV.

Affiant notes that with the limited size of the staff of local law enforcement bodies, large groups have become uncontrollable; and at the same time reduce personnel available to adequately give protection to the rest of the county.

V.

During this strike period, there have been numerous instances of rock throwing, window smashing, name calling, and other matters, including the carrying of pistols near the premises, the setting of fires on the premises and in at least one box car, and at least one shot from a flare gun.

SUBSCRIBED and sworn to before me this ____ day of August, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,
a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its PRESIDENT, JIM BLEDSOE and its OTHER OFFICERS JOHN DOES 1 THROUGH 3; INLAND EMPIRE DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its EXECUTIVE SECRETARY, BILLY H. BROTHER, and its OTHER OFFICERS, JOHN DOES 1 THROUGH 3; LOCAL UNION NO. 3171 OF LUMBER, PRODUCTION & INDUSTRIAL WORKERS and its OFFICERS DON SAPPINGTON, PRESIDENT, JESSIE BELL, III, and JOHN DOES 1 and 2, and BILL BURGESS, GUY PATCHEN, O. B. HAMILTON, CLAUDE MUELLER, KEN MacDONALD, RODNEY KEMMIS, JIM PATTERSON, TERRY JOHNSON, and JOHN DOES 1 THROUGH 163 OF SAID LOCAL AND EMPLOYEES OF PLAINTIFF.

Defendants.

CASE NO. 7441

AFFIDAVIT

STATE OF IDAHO)
) ss.
County of Boundary)

CHRIS PAULSON, being first duly sworn, deposes and says:

I.

Affiant is the manager of the Moyie Division of Louisiana--Pacific Corporation, the above named plaintiff.

II.

The Temporary Restraining Order has been very effective in reducing the injuries and damages by the conduct complained of in the pleadings and affidavits on file in this matter.

III.

Nevertheless, there have been several instances of violation by directly and indirectly blocking plaintiff's and plaintiff's agents and suppliers from entering and leaving the premises, impeding lumber trucks on highways, and by acts of intimidation, at least one of which has been of such excess as to require a contempt proceeding to be instituted.

IV.

Because of the above actions during the life of the Temporary Restraining Order, affiant believes such conduct would escalate in the event the Temporary Restraining Order is allowed to lapse prior to the hearing on plaintiff's complaint and motion for a permanent injunction.

____

SUBSCRIBED and sworn to before me this _____ day of July, 1983.

____
Notary Public for Idaho
Residing at Bonners Ferry

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its PRESIDENT, JIM BLEDSO and its OTHER OFFICERS JOHN DOES 1 THROUGH 3; INLAND EMPIRE DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, its EXECUTIVE SECRETARY, BILLY H. BROTHER, and its OTHER OFFICERS, JOHN DOES 1 THROUGH 3; LOCAL UNION NO. 3171 OF LUMBER, PRODUCTION & INDUSTRIAL WORKERS and its OFFICERS DON SAPPINGTON, PRESIDENT, JESSIE BELL, III, and JOHN DOES 1 and 2, and BILL BURGESS, GUY PATCHEN, O. B. HAMILTON, CLAUDE MUELLER, KEN MacDONALD, RODNEY KENNIS, JIM PATTERSON, TERRY JOHNSON, and JOHN DOES 1 THROUGH 163 OF SAID LOCAL AND EMPLOYEES OF PLAINTIFF. Defendants.	Case No. ______ AFFIDAVIT OF TOM MACKEY

STATE OF IDAHO)
) ss.
County of Boundary)

TOM MACKEY, being first duly sworn, deposes and says:

I.

Affiant observed defendant Jessie Bell interfere with and bother and attempt, with his vehicle, to impede a lumber truck attempting to leave plaintiff's yoard on July 12, 1983.

DATED this 13 day of July, 1983.

/S/ ______________________

SUBSCRIBED and sworn to before me this 13 day of July, 1983.

/S/ ______________________
Notary Public for Idaho
Residing at Bonners Ferry

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al.	Case no.___________ AFFIDAVIT

STATE OF IDAHO)
:ss
County of Boundary)

LAWRENCE W. POTTS, JR., being first duly sworn deposes and says:

I.

Affiant is Operations Manager of L-P, Inc., Intermountain Division.

II.

On the morning of July 13, 1983, as salaried employees of plaintiff were convoying to work under the protection of law enforcement personnel, some twenty vehicles operated by various members of defendant appeared and by aggressive and intimidating tactics forced all vehicles to slow down while creating a highly dangerous highway hazard.

III.

On July 13, 1983, some of the defendants barricaded Old U.S. Highway #2, now a paved county road within the municipality ---

of Moyie Springs, with vehicles and the defendants' bodies to prevent plaintiff, its agents, personnel and customers from entering the plant site; and this action is also impeding the use of the road by the general public.

DATED this 13 day of July, 1983.

/s/
Lawrence W. Potts, Jr.

SUBSCRIBED and sworn to before me this 13 day of July, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

83 2 03029 9

LOUISIANA-PACIFIC CORP., a
Delaware corporation,

Plaintiff,

v.

PUGET SOUND DISTRICT COUNCIL OF THE LUMBER PRODUCTION INDUSTRIAL WORKERS, LOCAL NO. 2633, and its officers JOHN DOES 1 THROUGH 4 and its Executive Secretary, ROBERT WESTBROOK and ALLAN MOORE, its Business Representative and Financing Secretary, and the LUMBER, PRODUCTION AND INDUSTRIAL WORKERS, AFL-CIO, and its WESTERN COUNCIL, and its officers, JAMES BLEDSOE, Executive Secretary, and its additional officers JOHN DOES 5 THROUGH 8; and JOHN DOES 9 THROUGH 65, being employees of Plaintiff and members of said Local No. 2633

Defendants.

NO.

AFFIDAVIT OF NOTICE
TO DEFENDANTS'
COUNSEL, DOUGLAS
B. M. EHLKE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

DOUGLAS B. M. EHLKE, being first duly sworn on oath, deposes and says: He is one of the attorneys for plaintiff, LOUSIANA-PACIFIC CORP.

At 9:43 a.m. and 9:45 a.m. respectively on July 5, 1983, affiant called BERNIE JOLLES, attorney for the WESTERN COUNCIL - LPIW, and the office of GEORGE DAVIES, attorneys for LOCAL 2633 and its members, and told them I would appear before the Honorable Presiding Judge THOMAS SAURIOL in Courtroom 100 of the Superior Court of Pierce Harbor County, Washington and request a temporary restraining order herein. They said they or a member of their firm would plan to appear as counsel for said respective Defendants. Mr. Davies' office will be represented by Attorney Finley Young. I told all of these Counsel that the hearing was scheduled for 2:30 p.m. or thereafter.

Douglas B.M. Ehlke
Douglas B. M. Ehlke attorney for Plaintiff,
Louisiana Pacific Corporation

SUBSCRIBED AND SWORN TO before me on July 5, 1983.

Sharon M. McClintock
Notary Public

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

83 2 03029 9

LOUISIANA-PACIFIC CORP., a Delaware corporation, Plaintiff,

v.

PUGET SOUND DISTRICT COUNCIL OF THE LUMBER PRODUCTION INDUSTRIAL WORKERS, LOCAL No. 2633, and its officers JOHN DOES 1 through 4 and its Executive Secretary ROBERT WESTBROOK and ALLAN MOORE, its Business Representative and Financial Secretary; and the LUMBER, PRODUCTION AND INDUSTRIAL WORKERS, AFL-CIO, and its WESTERN COUNCIL, and its Officers JAMES BLEDSOE, Executive Secretary and its additional officers JOHN DOES 5 through 8; and JOHN DOES 9 through 65 being employees of Plaintiff and members of said Local No. 2633, Defendants.

NO. ________________

AFFIDAVIT OF RICHARD D. COUCH IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

STATE OF WASHINGTON)ss.
COUNTY OF PIERCE)

RICHARD D. COUCH, being first duly sworn upon oath, deposes and says:

1. That I am a Security Guard employed by Burns Security Company at the Louisiana-Pacific Corporation's sawmill and plantsite located at 3701 Taylor Way in Tacoma, Pierce County, Washington.

2. That during this morning's July 5, 1983 return to work of day-shift employees of Louisiana-Pacific's Tacoma plant, I was on duty as a Security Guard at or near the front gate.

3. At aproximately 6:00 A.M. this morning, I saw a picketer member of striking Local 2633, Lumber Production Industrial Workers, close up the Main Gate in which L-P employees are supposed to enter. He walked hurriedly away as I approached him and he returned to the picketing group.

4. I checked the gate and found an unauthorized lock put on it, most likely by this picketer.

5. The Company had to take a blow torch to cut off this unauthorized lock off.

6. Then, for a second time, at about 7:00 A.M. this morning, I saw a second picketer (log yard employee who drives a blue Datsun and wears a beard) come over by the Main Gate and when I went to check it, another unauthorized different lock was put on, locking the front Main Gate from access by people or automobiles. That employee and Union Member walked back to the picketing group. The Company had to again remove this lock.

7. I also received a threat from a young, blond-haired picketer that he would "whip my a--" if I came back to remove any additional locks put on the Main Gate by Union members.

8. I also personally saw these Union picketers, at least 20 in total, block the driveways and Main Gate today by mass picketing, preventing entrance or exit from the plantsite.

They blocked the log trucks right in front of the engine and wheels and bumper, refusing to move.

9. I left the plantsite at 10:00 A.M. and was threatened by the above blond picketer as I tried to leave the plantsite.

Richard D Couch

Richard D. Couch

SUBSCRIBED AND SWORN to before me this 5d day of July, 1983.

NOTARY PUBLIC in and for the State of Washington, residing at Centralia

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

83 2 03029 9

LOUISIANA-PACIFIC CORP.,
a Delaware corporation,
Plaintiff,
v.
PUGET SOUND DISTRICT COUNCIL OF THE LUMBER PRODUCTION INDUSTRIAL WORKERS, LOCAL NO. 2633, and its officers JOHN DOES 1 through 4 and its Executive Secretary ROBERT WESTBROOK and ALLAN MOORE, its Business Representative and Financial Secretary; and the LUMBER, PRODUCTION AND INDUSTRIAL WORKERS, AFL-CIO, and its WESTERN COUNCIL, and its Officers JAMES BLEDSOE, Executive Secretary and its additional officers JOHN DOES 5 through 8; and JOHN DOES 9 through 65 being employees of Plaintiff and members of said Local No. 2633,
Defendants.

NO. ____________

AFFIDAVIT OF

JAMES T. LYNCH

IN SUPPORT OF PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

The undersigned, being first duly sworn on oath, testified as follows:

1. My name is James T. Lynch and I am employed as the Mill Manager of Louisiana-Pacific Corp.'s Tacoma sawmill and plantsite located at 3701 Taylor Way.

2. On Tuesday, July 5, 1983, I was at the plantsite early in the morning and observed the following labor picketing problems and events.

a. Our main gate for entrance and exit was locked by two unauthorized locks, at about 6:00 A.M. and again just before 7:00 A.M., which locked prevented employees, supervisors, applicants and vehicles from entering or leaving the gate. These locks had to be taken off with a blow torch.

b. Nearly 40 picketers by count blocked both plant gates throughout the morning.

c. My supervisors have complained of picket line abuse during any entrance or exit from the millsite.

d. Three log trucks were blocked by the picketers this morning and two were damaged by rock throwing.

e. I saw Elmer Adams truck #5 heavily damaged from rocks thrown at it; the damage included a broken side window, broken right headlight and the truck's water was drained out of the radiator by one of the picketers.

3. Allan Moore, Business Representative for L.P.I.W. Local 2633 stood by and watched these same truck damages by his Union local member without taking any action to stop it whatsoever.

4. The police have been unable to stop this continuing harassment and damage to our people and property.

5. At 9:36 A.M. this morning, I saw the Union picketers totally block a third log truck from entering our plantsite area. Their action blocked the entire main gate to the plant.

6. I was the target of abusive remarks and vehicle blocking th when I attempted to return to our plantsite before 11:00 A.M. in a van.

7. As a result of these Union picketer efforts, our plant's operations are directly and severely threatened toward a shutdown if we cannot get raw materials or products or supervisors through our plant gates.

8. We are trying to prevent serious head injuries to our employees and contractors such as an incident of injury that occurred today, at our Prineville, Oregon plantsite which is struck by this same Union affiliate local.

James T. Lynch
James T. Lynch

SUBSCRIBED AND SWORN to before me this 5th day of July, 1983.

Sharon I McClintock
NOTARY PUBLIC in and for the
State of Washington, residing
at Auburn.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

LOUISIANA-PACIFIC CORP.,
a Delaware corporation,
Plaintiff,

v.

PUGET SOUND DISTRICT
COUNCIL OF THE LUMBER
PRODUCTION INDUSTRIAL
WORKERS, LOCAL No. 2633,
et al

83 2 03029 9
NO.

AFFIDAVIT OF
DAVID BRADLEY

IN SUPPORT OF PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

The undersigned, being first duly sworn on oath, testified as follows:

1. My name is David Bradley and I am employed as the Plant Resource Manager of Louisiana-Pacific Corp.'s Tacoma sawmill and plantsite located at 3701 Taylor Way.

2. I witnessed the same picketing line events as described in James Lynch's Affidavit in this case and know them to be true.

3. When attempting to return to work today through our Back Plant Gate, I was blocked and verbally harassed by Union members of local 2633 in front of this gate.

4. At least 10 picketers were attempting to block me there.

5. I saw 15 to 20 picketers at the Main Gate this morning blocking a truck.

David B. Bradley
David Bradley

SUBSCRIBED AND SWORN to before me this 5th day of July, 1983.

NOTARY PUBLIC

AFFIDAVIT

STATE OF IDAHO)
) ss.
County of Boundary)

DON SMITH, being first duly sworn, deposes and says:

Affiant is the duly elected, qualified and acting Sheriff of Boundary County, Idaho, the county in which the Moyie Division, Louisiana-Pacific Corporation, plant is located.

II.

Affiant states the fact to be that the public officials charged with the duty to protect Louisiana-Pacific's property have failed to do so, and, alone, are unable to furnish adequate protection.

III.

Affiant believes that control could be had if there were a restraining order.

IV.

Affiant notes that with the limited number of [illegible] of local law enforcement bodies, [illegible] becomes uncontrollable and at the same time [illegible] personnel available to adequately give protection to the rest of the county.

V.

During this strike period, there have been numerous occurrences of rock throwing, window smashing, name calling, and other matters, including the carrying of pistols near the premises, the setting of fires on the premises and in at least one box car, and at least one shot from a flare gun.

/s/ ____________________

SUBSCRIBED and sworn to before me this 11 day of August, 1953.

/s/ ____________________
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	CASE NO. 7465 AFFIDAVIT OF WALLY HUGGINS

STATE OF IDAHO }
} ss.
County of Boundary }

WALLY HUGGINS, being first duly sworn, deposes and says:

I.

I live in Moyie Springs, Idaho, and have lived there for the past eight years. I have tried to not get involved in the strike. I am not a Union member; I am just a Moyie Springs citizen.

II.

The recent actions in setting box cars afire; derailing box cars; and knocking over the power pole which deprived us of water as well as power, have made me decide to respectfully ask the Court to keep the Restraining Order in effect. The strikers don't seem to act up so much for a little while each time a Judge tell them not to.

____

SUBSCRIBED and sworn to before me this _____ day of August, [illegible].

____
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO
83805
TELEPHONE: 267-3127

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7165
)
-vs-) AFFIDAVIT OF
) JACK BILLINGSLEY
WESTERN DISTRICT COUNCIL, LUMBER,)
PRODUCTION & INDUSTRIAL WORKERS,)
et al.,)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

JACK BILLINGSLEY, being first duly sworn, deposes and says:

I.

I am an employee of Louisiana-Pacific, Moyie Division. I live directly across the road from the plant lumber yard.

II.

On Tuesday night, August 16, 1983, at approximately 9:55 p.m., right after the power went off, I observed a pickup stop in front of my house three or four times. The drivers of the pickup and a small car that pulled in behind him, were hollering, blowing their horns, revving their motors, and generally harrassing the neighborhood. This conduct went on for at least an hour after the power went off.

III.

I could not identify the occupants of the vehicles, but the pickup had a spare tire mounted on the front and an antenna on the front bumper.

IV.

There were four or five people congregated with their vehicles near the railroad tracks a short distance from my house. Whenever a security guard would appear in the lumber yard, they would turn a spotlight into the yard.

SUBSCRIBED and sworn to before me this ______ day of August, 1983.

Notary Public for Idaho
Residing at Bonners Ferry

[illegible] J. SELAK
LITTLER, [illegible], FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	CASE NO. [illegible] AFFIDAVIT OF MICHAEL T. ASHBY

STATE OF IDAHO) ss.
County of Boundary)

MICHAEL T. ASHBY, being first duly sworn, deposes and says:

I.

I am a 966 operator for Louisiana-Pacific, Moyie Springs.

II.

The following incidences have occurred to my personal knowledge:

A. Ray Webb, a member of Local #3171, while at the picket line, aimed his bow with arrow at me.

B. While the previous Temporary Restraining Order was in effect, I saw Jesse Bell, Vice-President of Local #3171, throw an egg at an employee driving to work.

C. At a Union meeting on July 9, 1983, a union head from out of town said, "Use your imagination. I can't tell you what to do, but they aren't at the plant site all the time." When asked if this meant violence, he just smiled [illegible] "I can't tell you what to do." Billy Brothers, [illegible] Inland Empire District Council, along [illegible] president of Local [illegible], and [illegible] [illegible] the meeting and did not disagree with [illegible] comments.

/s/

[illegible] and sworn to before me this 15 day of [illegible]

/s/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

[illegible] COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

[illegible]-PACIFIC CORPORATION,
[illegible] corporation,

Plaintiff,

-vs-

[illegible] COUNCIL, LUMBER,
[illegible] & INDUSTRIAL WORKERS,
et al.,

Defendants.

CASE NO. 7448

AFFIDAVIT OF
C. WAYNE CARLSON

STATE OF IDAHO
County of Boundary } ss.

C. WAYNE CARLSON, being first duly sworn, deposes and says:

I.

I am a Prentice operator for Louisiana-Pacific Corporation, [illegible] Division.

II.

On or about July 26, 1983, Rick Crawford and Terry [illegible], both members of Local #3171, said to me, "Better you go back to work --- you might be up in the woods and there could be a shooting accident."

SUBSCRIBED and sworn to before me this 14 day of August, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, **Plaintiff,** **-vs-** **WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al.,** **Defendants.**	CASE NO. 7465 AFFIDAVIT OF JAMES C. COLLYER

STATE OF IDAHO
) **ss.**
County of Boundary

JAMES C. COLLYER, being first duly sworn, deposes and **says:**

1.

I am a stacker for Louisiana-Pacific Corporation, Moyie Division.

2.

On or about July 10, 1983, Jesse Bull, vice-president **of Local #3171** stated to me:

"**I'm going** to use my power to throw you out **for this, and fire you as** much as possible. Just for what you've **done.** I'm going to hurt you, I'm going to hurt you bad. **I'll get you.** I'm going to personally see to it that **every bone in** your body is broken."

III.

At a Union meeting on or about July 9, 1983, a Union head from Portland said, "These trucks going in and out of the plant have to be stopped. I can't condone violence, however at our plants in California we've slashed tires and broken out windows --- use your imagination."

/s/

SUBSCRIBED and sworn to before me this 15 day of August, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
Plaintiff,) CASE NO. 7465
-vs-)
WESTERN DISTRICT COUNCIL, LUMBER,) AFFIDAVIT OF
PRODUCTION & INDUSTRIAL WORKERS,) ROY COPELAND
et al.,)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

ROY COPELAND, being first duly sworn, deposes and says:

I.

I am a mechanic for Louisiana-Pacific Corporation, Moyie Division.

II.

At the July 9, 1983, union meeting, I heard the "pep talk" on stopping trucks. The Union guy from Portland said, "For some reason, where I'm from, somehow tires get slashed, windows fall out.

III.

At the July 23, 1983, Union meeting, someone asked what they should do with Mike Ashby, a Louisiana-Pacific employee. Union member ~~Lonnie~~ Roy Gross said, "Hang him."

/S/

SUBSCRIBED and sworn to before me this 15 day of August, 1983.

/S/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	CASE NO. 7465 AFFIDAVIT OF DANA DAFOE

STATE OF IDAHO)
) ss.
County of Boundary)

DANA DAFOE, being first duly sworn, deposes and says:

I.

I own and operate the Hemlocks Restaurant, and I have a contract to cater food to Louisiana-Pacific, Moyie Division.

II.

After I got the catering contract, several of the MacDonald boys, Steve Olson, and a Peock, all members of Union Local #3171, tore down one of my highway advertising signs and dumped it at my doorstep. At that time they said, "We don't like your attitude. We will let others know you are serving scabs. We'll make sure no one comes to your restaurant to eat."

III.

I have had a ten-year background in police work. My training has included training in mob control. In my opinion, local law enforcement agencies cannot handle the situation without some retraining. If there is no restraining order, agencies from outside the area will have to be brought in. Already some state police from outside the area have come in temporarily. The reason for my opinion is that the local sheriff's staff is simply too small to handle a problem of this size.

IV.

To this date, whenever there are three or more at a picket station, the union members on duty try to intimidate me with vile language and gestures.

V.

During one day of Kootenai River Days, I was in the Beer Garden at the Fairgrounds (in Bonners Ferry) disbursing raffle tickets for the Curley Creek Fire District Benefit Drawing. The MacDonald boys, all members of Local #3171, were there. By their vile language, gestures and movement, they intimidated me so much that I had to leave the premises before finishing the disbursement.

/S/

SUBSCRIBED and sworn to before me this 15 day of August, 1983.

/S/
Notary Public for Idaho
Residing at Bonners Ferry

AFFIDAVIT OF DANA DANFOE - 2

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,
Plaintiff,
-vs-
WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al.,
Defendants.

CASE NO. 7465

AFFIDAVIT OF DOUG FLORY

STATE OF IDAHO)
) ss.
County of Boundary)

DOUG FLORY, being first duly sworn, deposes and says:

I.

I am the stud mill foreman for Louisiana-Pacific Corporation, Moyie Division.

II.

On the night of July 25, 1983, I was talking to Larry Pruitt, a member of the Union Local #3171. I had just stated that it was too bad this violent conduct was going on. Larry Pruitt said, "It's going to get a lot worse."

III.

On August 4, 1983, at about 10:30 p.m., a thrown object hit the roof of my pickup while I was on company property.

It had to have come from the vicinity of the picket line. Those eight or nine on the picket line at that time were all Union members of Local #3171. I can identify by name Skip Poulsen and Larry Pruitt.

/S/

SUBSCRIBED and sworn to before me this 15 day of August, 1983.

/S/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,

Plaintiff,

-vs-

WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al.,

Defendants.

CASE NO. 7465

AFFIDAVIT OF TOM FOUST

STATE OF IDAHO)
) ss.
County of Boundary)

TOM FOUST, being first duly sworn, deposes and says:

I.

I am an independent logger. I have a contract with Louisiana-Pacific Corporation, Moyie Division.

II.

On August 1, 1983, Larry Pruitt, a member of Union Local #3171, said to me, "If you come to work here, your woods equipment could suffer." He then added that he wouldn't do it, but someone would. I believed them, and still believe, everything he said.

SUBSCRIBED and sworn to before me this 14 day of August, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
-vs-)
)
WESTERN DISTRICT COUNCIL, LUMBER,)
PRODUCTION & INDUSTRIAL WORKERS,)
et al.,)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

ERIC LEDERHOS, being first duly sworn, deposes and says:

I.

I am a new employee for Louisiana-Pacific Corporation, Moyie Division.

II.

On July 24, 1983, I was driving by the front of the Moyie Club. At least eight of the crowd around the Club were Union members of Local #3171. At that time at least one rock was thrown at me from the crowd.

III.

On July 24, 1983, I heard Don Sappington, president of the Union's Local #3171, state, "If I knew who in the Union

-----

shot Sam's (Fodge) truck, I would turn him in myself, and the same goes for who threw the rock at Tommy (Fodge)."

/s/

SUBSCRIBED and sworn to before me this 14 day of August, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation, Plaintiff, -vs- WESTERN DISTRICT COUNCIL, LUMBER, PRODUCTION & INDUSTRIAL WORKERS, et al., Defendants.	)	CASE NO. 7465 AFFIDAVIT OF LANI MILLER

STATE OF IDAHO)
) ss.
County of Boundary)

LANI MILLER, being first duly sworn, deposes and says:

I.

Since July 26, 1983, I have been a barker for Louisiana-Pacific, Moyie Division.

II.

I used to walk to work, and go through the front gate. On July 26, 1983, and other, later times, Bruce Merrifield, a Union member of Local #3171, said to me, "You'd better watch it, your time's coming. I wouldn't walk there if I were you --- something might happen."

III.

I then started going to work the back way. As I was starting to work on July 28, 1983, I met Kevin Church, a Union member of Local #3171, and another Union member who were waiting in my yard. One of them was drinking. After calling me vile names, they then said, "We're just passing the message along from the other members that they are going to get you - it will be at night -- your house will be broken into --your wife will get it too."

/s/

SUBSCRIBED and sworn to before me this 15 day of August, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

MICHELE J. SILAK
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St. 20th Floor
San Francisco, CA 94108
(415) 433-1940

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

LOUISIANA-PACIFIC CORPORATION,)
a Delaware corporation,)
)
Plaintiff,) CASE NO. 7465
)
-vs-) AFFIDAVIT OF
)
WESTERN DISTRICT COUNCIL, LUMBER,) CHRIS PAULSON
PRODUCTION & INDUSTRIAL WORKERS,)
et al.,)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Boundary)

CHRIS PAULSON, being first duly sworn, deposes and says:

I.

I am the Manager of Louisiana-Pacific, Moyie Division.

II.

When the violence started about five weeks ago, I heard Union members talking back and forth on their CBs. One said, "If I go to jail over this, Chris Paulson's house better not be standing when I get out, or I'll be very disappointed." This voice has been identified by Joe Tolar as the voice of Ken MacDonald, a member of Union Local #3171.

III.

The plant has suffered substantial damage. Rocks, coming from the picket line, have smashed windows in several buildings. On the night of August 10, 1983, and the morning of August 11, 1983, a new peak in the violence occurred. A railroad freight car being loaded was set afire, and another was set loose so that it rolled down the tracks and derailed. The only persons near that area were Union pickets. I, with others, fought to put the fire out. While we were doing this, we were pelted with rocks from the picket line.

That same eveing, rocks from the area of the picket line, some over six inches in diameter, were hurled through the windows of the company's office.

IV.

Attached is a copy of the affidavit of Sheriff Ron Smith. The original is on file with the National Labor Relations Board in Seattle.

V.

Attached are clippings from recent issues of the Spokesman Review that tell some of the story of the violence.

VI.

At the present time, the Moyie operation is losing over $20,000.00 per day because of this turmoil, and that sum cannot be recovered.

6

/s/

SUBSCRIBED and sworn to before me this 15 day of August, 1983.

/s/
Notary Public for Idaho
Residing at Bonners Ferry

THOMAS, TALIAFERRO, FORMAN, BURR & MURRAY
1600 BANK FOR SAVINGS BUILDING
BIRMINGHAM, ALABAMA 35203
(205) 251-3000

ANDREW J. THOMAS
BRUCE KEY
OF COUNSEL
MARK L. TALIAFERRO 1906-1983
JAMES R. FORMAN, JR.
SAMUEL H. BURR
WILLIAM K. MURRAY
A. JACKSON NOBLE, JR.
C. V. STELZENMULLER
ROBERT G. TATE
J. FRED POWELL
SAMUEL W. OLIVER, JR.
PAUL O. WOODALL
J. FREDRIC INGRAM
LOUIS H. ANDERS, JR.
WILLIAM C. KNIGHT, JR.
JOSEPH G. STEWART
JOHN D. CLEMENTS
MARK TALIAFERRO, JR.
J. ROSS FORMAN, III
D. FRANK DAVIS

A. BRAND WALTON, JR.
WILLIAM F. MURRAY, JR.
JACK P. STEPHENSON, JR.
ERIC L. CARLTON
JAMES J. ROBINSON
JOSEPH W. LETZER
T. THOMAS COTTINGHAM
THOMAS L. KREBS
J. PATRICK LOGAN
GEORGE M. TAYLOR, III
GARY M. LONDON
JULIA SMEDS
BRUCE A. RAWLS
F. A. FLOWERS, III
WILLIAM W. BROOKE
MAURA R. GOODWYN
JOSEPH C. GILL, JR.
MICHAEL L. LUCAS
DWIGHT L. MIXSON, JR.
J. HUNTER PHILLIPS, III
DAVID D. DOWD, III
CAROL H. WOLFE

April 26, 1984

Mr. Terry Campo
S.D. 248
United States Senate
Washington, D.C. 20510

Dear Mr. Campo:

I am disappointed that the committee hearings on the proposed amendment to the Hobbs Act do not include any witnesses from Alabama. I have gathered a set of documents that may possibly be worthy of inclusion as exhibits in the committee hearings, however. This particular set of documents all relates to a single strike in a small plant which is still going on and soon will have lasted one year. I chose to give you this set of documents because it shows how a typical violent strike happens in Alabama and while I might be able to show you more dramatic instances by choosing from several strikes, there is some merit in considering only one of them.

As you will see from the enclosed papers, there have been countless instances of smashed windows, damaged cars, tacks strown in driveways, puncturing of tires, threats, fires, and the like. The worse two instances were two non-striking employees who got shot at the picket line, one in the arm and the other in the cheek. This is the man in whose cheekbone the bullet lodged and remains there because the doctors are afraid to operate for fear of his life.

There is considerable videotape footage relating to this strike and I am endeavoring to obtain a copy of this and hope to get it to you early next week.

Very truly yours,

C. V. Stelzenmuller

C. V. Stelzenmuller

CVS/cj

IN THE CIRCUIT COURT OF ST. CLAIR COUNTY, ALABAMA
NORTHERN DIVISION AT ASHVILLE

BIRMINGHAM MANUFACTURING COMPANY, INC., a corporation,

Plaintiff,

vs.

UNITED STEEL WORKERS OF AMERICA, AFL-CIO CLC, a Labor Organization, an unincorporated association; LOCAL 7832, UNITED STEEL WORKERS OF AMERICA, AFL-CIO CLC, a Labor Organization, an unincorporated corporation,

Defendants.

CIVIL ACTIO[illegible] 83-41

FILED
NOV 15 1983
ST. CLAIR COUNTY
Norman Smith
CLERK & REGISTER

AMENDMENT TO PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE

Comes the plaintiff, Birmingham Manufacturing Company, Inc., and amends its motion for an order to show cause why the defendant, Local 7832, United Steel Workers of America, AFL-CIO CLC, should not be held in contempt of this Court. By this verified amendment, plaintiff adds the following to its motion:

12. On September 8, 1983 the Court issued an Order requiring defendant Local 7832 to show cause why it should not be held in contempt of court for violating the Court's Temporary Restraining Order (T.R.O.).

13. Since the Court issued its Order to show cause, defendant Local 7832 has continued to violate the Court's T.R.O.

14. On September 28, 1983, one of plaintiff's employees was shot in the face and another was shot in the arm by a picketer on the picket line.

PLAINTIFF'S
EXHIBIT
"A"

15. During the month of November, 1983, and on numerous other occasions since the Court issued its Order to show cause, the number of picketers at or near plaintiff's main gate has consistently and greatly exceeded the number (two) allowed by the T.R.O. On various occasions there have been up to 12 to 15 picketers at or near plaintiff's main gate.

16. Officers of defendant Local 7832 have participated in picketing at or near plaintiff's main gate when the number of picketers exceeded the number allowed by the T.R.O.

17. On numerous occasions, including November 2, 1983, and November 8, 1983, picketers have carried clubs while picketing at or near plaintiff's main gate.

18. On November 8, 1983 picketers attempted to provoke an altercation with plaintiff's employees while they were exiting from plaintiff's main gate. One picketer was carrying a club and another used a slingshot to shoot ball bearings at the employees' vehicles.

Barry V. Frederick

BARRY V. FREDERICK
ATTORNEY FOR PLAINTIFF

OF COUNSEL:

LANGE, SIMPSON, ROBINSON & SOMERVILLE
1700 First Alabama Bank Building
Birmingham, Alabama 35203
(205) 250-5016

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Amendment to Plaintiff's Motion for an Order to Show cause by hand delivering a copy of same to Mr. Robert Stropp, counsel for defendants, to his office address: Cooper, Mitch & Crawford, 409 North 21st Street, Suite 201, Birmingham, Alabama 35203, on this the 14th day of November, 1983.

Barry V. Frederick

OF COUNSEL

IN THE CIRCUIT COURT OF
ST. CLAIR COUNTY, ALABAMA
NORTHERN DIVISION AT ASHVILLE

BIRMINGHAM MANUFACTURING COMPANY, INC., a corporation,)
Plaintiff,)
vs.) CIVIL ACTION NO. CV 83-41
UNITED STEEL WORKERS OF AMERICA, AFL-CIO CLC, A Labor Organization, and unincorporated association; LOCAL 7832, UNITED STEEL WORKERS OF AMERICA, AFL-CIO CLC, A Labor Organization, an unincorporated corporation,)
Defendants.)

FILED
SEP 2 1983
ST. CLAIR COUNTY
Norman Smith
CLERK & REGISTER

MOTION FOR AN ORDER TO SHOW CAUSE

Comes the plaintiff, BIRMINGHAM MANUFACTURING COMPANY, INC., and submits this verified motion for an order to show cause why the defendant, Local 7832, United Steel Workers of America, AFL-CIO-CLC, should not be held in contempt of this Court. In support of this motion, plaintiff states the following:

1. At 1:15 P.M., on May 26, 1983, this Court issued a Temporary Restraining Order (T.R.O.), a true and correct copy of which is attached hereto as Exhibit "A" and, by reference, is incorporated herein. On May 31, 1983, the Court extended the Temporary Restraining Order, and it has since remained in effect.

2. Plaintiff alleges that since the Court issued its Temporary Restraining Order, the number of picketers present at or near plaintiff's main gate has steadily increased beyond the number (two) allowed by the T.R.O. In the month of August, 1983, there have consistently been at least 5 to 6 picketers present at or near plaintiff's main gate. On numerous occasions, even more picketers have been present:

(a) On August 15, 1983, approximately 8 picketers were present;

(b) On August 17, 1983, approximately 9 picketers were present;

(c) On August 26, 1983, approximately 12 picketers were present;

(d) On August 30, 1983, approximately 8 picketers were present.

3. Officers of defendant Local 7832 have participated in picketing at or near plaintiff's main gate when the number of picketers exceeded the number allowed by the T.R.O.

4. In the evening of August 30, 1983, a mob of 10 to 15 picketers gathered at or near plaintiff's main gate. Windows in plaintiff's office building were broken by rocks, a window in plaintiff's plant office was shot out, and two tractor trucks on plaintiff's property were shot and damaged.

5. The violence committed and damage inflicted on the evening of August 30, 1983, was the worst of similar incidents that occurred with increasing frequency in August of 1983. On several occasions, rocks shattered windows in the front of plaintiff's office building, and one evening the guard house at plaintiff's main gate was overturned.

6. On numerous occasions in August, 1983, picketers at or near plaintiff's main gate have approached the driveway from U. S. Highway 11 to plaintiff's main gate with knives, sticks, and other potential weapons in their hands while plaintiff's employees entered or exited from the gate.

7. On numerous occasions in August, 1983, picketers threw nails onto U. S. Highway 11 and onto the driveway from U. S. Highway 11 to plaintiff's main gate. The picketers threw the nails directly in front of or in the path of vehicles of plaintiff's employees and tractor-trailer rigs operated by interstate carriers as they entered or exited from the main gate. The nails caused innumerable flat tires on the vehicles of plaintiff's employees and on the tractor-trailer rigs of interstate carriers.

8. On numerous occasions during the month of August, 1983, picketers parked numerous vehicles at or near plaintiff's place of business along U. S. Highway 11 in excess of the number allowed by the T.R.O.

9. As of the morning of September 1, 1983, 5 picketers and 5 of their vehicles were at or near plaintiff's main gate. Nails were found on U. S. Highway 11 in,front of plaintiff's place of

business and on the driveway from U. S. Highway 11 to plaintiff's main gate. More rocks had shattered the broken glass that remained in windows previously broken out of plaintiff's office building.

10. Plaintiff alleges that the defendant, by and through its officers, agents, and members, has deliberately and knowingly violated the order of this Court entered on May 26, 1983, and extended on May 31, 1983.

11. Plaintiff alleges that the union's violations of the T.R.O., the violence and the damage inflicted on plaintiff's property have steadily increased and will continue to increase unless the Court grants the relief prayed for herein.

WHEREFORE, Plaintiff prays that this Court issue an order requiring the defendant to appear and show cause, if any it has, why it should not be adjudged in contempt of this Court's order of May 26, 1983, as extended on May 31, 1983, and plaintiff prays that the Court will grant such relief, including its damages and reasonable attorneys' fees, as may be just and proper.

Harry L. Hopkins
HARRY L. HOPKINS

Barry V. Frederick
BARRY V. FREDERICK

Attorneys for Plaintiff

OF COUNSEL:

Lange, Simpson, Robinson & Somerville
1700 First Alabama Bank Building
Birmingham, Alabama 35203
Telephone: (205) 252-7000

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion for an Order to Show Cause upon Mr. Robert Stropp, counsel of record for defendants, by hand delivering a copy of same to his office at Cooper, Mitch & Crawford, Suite 201, 409 North 21st Street, Birmingham, Alabama, 35203.

This 2nd day of September, 1983.

Barry V. Frederick
OF COUNSEL

IN THE CIRCUIT COURT OF
ST. CLAIR COUNTY, ALABAMA
NORTHERN DIVISION AT ASHVILLE

BIRMINGHAM MANUFACTURING COMPANY, INC., a corporation,	)	
Plaintiff,	)	
vs.	)	CIVIL ACTION NO.
UNITED STEEL WORKERS OF AMERICA, AFL-CIO CLC, A Labor Organization, and unincorporated association: LOCAL 7832, UNITED STEEL WORKERS OF AMERICA, AFL-CIO CLC, A Labor Organization, an unincorporated corporation,	)	CV 83-41
Defendants.	)	

ORDER

This cause having been presented to the Court on the plaintiff's verified motion for an order to show cause why defendant Local 7832 should not be held in contempt, and the Court having considered the same, it is

ORDERED, that defendant Local 7832 appear before this Court on the 14th day of October, 1983, at 1:00 o'clock, P.M., at the St. Clair County Courthouse in Ashville, Alabama, and show cause, if any it has, why it should not be held to be in contempt of the Temporary Restraining Order issued by this Court on May 26, 1982, and extended on May 31, 1983.

It is further ORDERED that the Sheriff of the County shall forthwith serve a copy of this Order, together with plaintiff's motion for an order to show cause, upon the defendant Local 7832.

DONE this 8th day of September, 1983, at Ashville, Alabama.

Carl D. Nesmith
CARL. D. NESMITH
CIRCUIT COURT JUDGE

FILED
SEP 9 1983
ST. CLAIR COUNTY
Norman Smith
CLERK & REGISTER

IN THE CIRCUIT COURT

OF ST. CLAIR COUNTY, ALABAMA

BIRMINGHAM MANUFACTURING COMPANY, INC., a Corporation,)

Plaintiff)

vs.) CIVIL ACTION NO. CV-83-41

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, a labor organization and unincorporated association; LOCAL 7832, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, labor organizations and unincorporated associations,)

Defendants)

FILED
MAY 26 1983
ST. CLAIR COUNTY
Norman Smith
CLERK & REGISTER

O R D E R

This matter being presented to the undersigned Judge of the Circuit Court of St. Clair County, Alabama upon the sworn complaint of the plaintiff, and all parties having had notice of such presentation and an opportunity to be present, and the Court, after considering the same, is of the opinion that the requested temporary restraining order should be granted in accordance with the relief requested in said complaint.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the defendant~~s~~ Local 7832, United Steelworkers of America, AFL-CIO-CLC be and they hereby are temporarily restrained from (a) threatening, intimidating, assaulting, attacking, or in any way using force or violence, or the threats of force or violence to prevent or to attempt to prevent any person from pursuing his or her lawful employment with plaintiff, or otherwise do business with plaintiff; (b) from having more than two pickets at or near each entrance to plaintiff's place of business from a public road plaintiff's place of business, provided, however, that such pickets shall in no way interfere with, restrain or coerce those persons doing work for or business with plaintiff; (c) following, pursuing or chasing plaintiff's employees on the public streets, roads, and highways as they travel to and from work; (d) blocking by any means, including persons and objects, the ingress and egress to plaintiff's place of business; (e) damaging in any manner or threatening to damage in any manner the personal property of plaintiff's employees, those doing work for or business with plaintiff, or plaintiff; (f) using in any manner any stick, club, rock or other potential weapon either to harm or to frighten any of plaintiff's employees or others having business relations with plaintiff; (g) placing roofing nails or other nails on the entrance to plaintiff's property; (h) using reflective mirrors to blind plaintiff's employees or other persons seeking to enter plaintiff's property; (i) having more than two automobiles or trucks of the strikers at or near each public entrance to plaintiff's place of business along U.S. Highway 11; (j) assaulting and inflicting batteries with sticks, clubs, rocks or other objects upon plaintiff's employees or others having business relations with plaintiff.

The plaintiff first gives security in the sum of five hundred ($500.00) Dollars for the payment of such costs, damages and reasonable attorney's fees as may be incurred or suffered by any party who is found to be wrongfully enjoined or restrained, such bond to be approved by the Court or the Clerk of the Court; and it is further

ORDERED that the plaintiff's motion for a preliminary injunction contained in its verified complaint be set down for hearing on the 1st day of June, 1983, at 1:00 o'clock P.m., at Ashville, Alabama; and it is further

ORDERED that copies of this order and of the plaintiff's complaint, together with proper summons issued by the Clerk of the Court be immediately served by the sheriff of this county upon the defendants.

Issued this 26th day of May, 1983, at 1:15 o'clock P.m.

S/ Carl D. B. Smith
Circuit Judge

BURNS Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 8/17/83
TIME OF REPORT 6^15 [✓ A.M.]

CLIENT: Birmingham Mfg Co
ADDRESS: Springville Ala
JOB NUMBER:
LOCATION OF INCIDENT Main office Bldg
INCIDENT Breaking of two Windows main office Bldg.
DATE OCCURRED 8/16/83 TIME OCCURRED AM PM

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.) On the night of 8/16/83 two Windows on the east side of Main office bldg. were broken by unknown Person or Persons.
Time Occurred Not known.

SIGNED Th. P. Gahan
PAGE
RANK
BADGE #

BURNS

Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 8/3/83
TIME OF REPORT 5 52 [✓ AM.] M

CLIENT: Birmingham Mfg Co
ADDRESS: Springville Ala
JOB NUMBER: LOCATION OF INCIDENT Strike Sight L & C Area
INCIDENT Pellet Gun Fired & Rocks thrown
DATE OCCURRED 8/2/83 TIME OCCURRED AM 11^{20} PM

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

Guard's T.Wikes J.C.Cover Report Pellet Gun Fired & Rocks thrown in Direction of Plant Area. SpringVille Police Arrive At 11^{30} leave 11^{40} All Secure At This time Guard report Rock thrown During rounds For Several Hours.

635 AM 8/3/83

* Mr Garman reports to Me Sgt W.P. Garron A large Group of Nails Were found in Rear Parking Area Causing flat tires On Workers Vehicles Mr Garman & Sgt Garon Check Area Again & Found Nails.

715 AM

* Sgt Garron Making Fence Check 50 to 75 feet Directly Below West Gate Observed A large Group of Nails notified Mr Garman & Guard Grant an We Pick up Nails

SIGNED Sgt P. Garran
PAGE ______ OF ______
RANK Sgt
BADGE # 12353

Form
R v 3/77

CLIENT COPY

Mr Garman

Mr Garman has Read And Agrees. Bill Garon

BURNS Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 8-13-83
TIME OF REPORT 6:00 P.M.

CLIENT: B'ham Mfg. Co.
ADDRESS: P.O. Box 289
JOB NUMBER:
LOCATION OF INCIDENT 193 Main St. Springville, Ala. 35146
INCIDENT Firing of shots by strikers or/and person(s) at B'ham Mfg. Plant
DATE OCCURRED 8-12-83
TIME OCCURRED Approx. 6:15 AM [✓ PM]

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

At approximately 6:15 P.M. 8-12-83, several shots were fired from person(s) on a motorcycle positiond at the West Gate into the Western section of the plant (B'ham Mfg. Co.) I Guard Willie A. Major immediately reported said incident to the Springville Police Dept. The reply from the woman who answered the phone was- They are busy right now. Someone will be there as soon as possible. At approx. 6:40 P.M. 8-12-83, I tried to get Mr. Larry Garmon on the phone. The phone(s) would give a busy signal. The same occured when I tried to reach the Night Supervisor. Each attempt to call out on the phone would render a recording from the operator.
At approx. 6:51 P.M. 8-12-83, another shot was fired into the Eastern section of said plant. Each time a shot was fired, the raising of a motorcycle motor and siren somewhat muffled the sound of the shots. From the time of 6:00 PM to 10:15 8-12-83, there

SIGNED Willie A. Major

PAGE

BADGE

Burns International Security Services, Inc.
Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 8-13-83
TIME OF REPORT 6:00 P.M.

CLIENT: B'ham Mfg. Co.
ADDRESS: P.O. Box 289
JOB NUMBER:
LOCATION OF INCIDENT 193 Main St. Springville, Ala. 35146
INCIDENT Firing at shots by strikers or/and persons(s) at B'ham Mfg. Plant
DATE OCCURRED 8-12-83
TIME OCCURRED Approx. AM 6:15 [✓ PM]

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW)

were several vehicles (6) and one (1) motor cycle on the East Gate picket line. I was able to reach Mr. Gorman at approximately 9:25 P.M. 8-12-83. I explained the situation and was told by Mr. Gorman to call him back if any more trouble occurred. Still no contact with Springville Police. At approximately 9:35 P.M. 8-12-83, I was able to call Sgt W.P. Graham. Situation was explained to him also. Sgt. Graham passed on these instructions; Stay on top of the cutting machine and compressor. These instructions were passed on to Guard Dave Williams and complied with. At approximately 10:05 P.M. 8-12-83, Strikers and or persons turned over the East Gate Guard Shack. I was still unable to phone Springville Police Dept. I then notified Mr. Gorman and Sgt. Graham. Incident about the Guard Shack was reported. No contact was made at the end of the shift with the Springville Police Dept. Efforts were made periodically (every half-hour)

W.P. Graham
Sgt Supervisor

SIGNED
PAGE
NAME
BADGE #

BURNS

Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 8/10/83/
TIME OF REPORT 7:35 AM M.

CLIENT: BIRMINGHAM MANUFACTURING COMPANY.
ADDRESS: P.O. BOX 289 SPRINGVILLE ALABAMA
JOB NUMBER: 1
LOCATION OF INCIDENT: IN FRONT OF MAIN BUILDING
INCIDENT: LARGE DEAD ANIMAL (DOG) LEFT IN FRONT OF BLDG.
DATE OCCURRED: 8/9/83
TIME OCCURRED: UNKNOWN AM UNK. PM UNK.

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

AN EMPLOYEE OF B'HAM MANUFACTURING REPORTED TO SECURITY OFFICERS THAT A LARGE DEAD DOG WAS IN FRONT OF THE BLDG. SECURITY CALLED THE LOCAL ANIMAL HUMAINE SOCIETY, A MR. PEOPLE WOULD COME OUT SOMETIMES AFTER EIGHT O'CLOCK. NO WITNESS TO THIS INCIDENT.

SIGNED: Earl Grant
PAGE 1 of 1
RANK: GUARD
BADGE #: 126578

Form R v. 5/77

CLIENT COPY

BURNS

Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 7/26/83

TIME OF REPORT 7/27/83 6^{45} AM

CLIENT: Birmingham Mfg Co

ADDRESS: SpringVille Ala.

JOB NUMBER 08245700Q

LOCATION OF INCIDENT SpringVille Plant

INCIDENT Shots Fired At Company Property

DATE OCCURRED 7/26/83

TIME OCCURRED 11pm AM [✓ PM]

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

Six Vehicles Reported at Strike Deg hf (11pm) Shooting Begins, ① Side of Plant Building (Main Guard Shack) Was hit, two Security lights were Shot Out one At Main Gate Intrance & Other to the Right Front of Main Gate. SpringVille Police Arrived At 11:05 Before Guards Were Able to put in A Call

PAGE 1 of 1

SIGNED J. P. Gahan

RANK Sgt.

BADGE # 12353

Form R v. 5/77

CLIENT COPY

BURNS

Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 8/24/83
TIME OF REPORT 6^{15} [✓ AM] M

CLIENT: Birmingham [illegible] Co
ADDRESS: Springville
JOB NUMBER:
LOCATION OF INCIDENT Main Gate & Main Bldg
INCIDENT Rocks thrown & Shots Fired
DATE OCCURRED 8/23/83 TIME OCCURRED AM 9^{00} [✓ PM]

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, HOW.)

8 strikers on Picket Line Started throwing rock & Firing Gun or Pellet Gun at Main Bldg At 10^{35} PM Springville Police Came on Sight & Were Notified of Damage to Bldg & Windows

Guards on Duty Chas Cover
Willie Gibson

PAGE ____ of ____
SIGNED G. P. Gahan
RANK Sgt.
BADGE # 12353

Form
R v. 5/77

CLIENT COPY

BURNS Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 7/20/83
TIME OF REPORT 7^{20} A.M.

CLIENT: BiRmingHam Mfg Co
ADDRESS: SpRingVille AlA
JOB NUMBER: 08 24 57 002
LOCATION OF INCIDENT: Hwy #9 in Route to Job
INCIDENT: WoRKeR's CAR Hit By Shot Gun FiRe
DATE OCCURRED 7/20
TIME OCCURRED 6^{45} [✓ AM] PM

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

MeRCURY 2D 1976 TAG # AlA 28A 3435
LeFT FRont FenDeR Hit LeFT ReaR & TRUNK
Hit on Hwy 9 in Route To WoRK
1 JeRome P BRUMLey DRiveR (Phone 6232059)
2 Steve FRenchKo

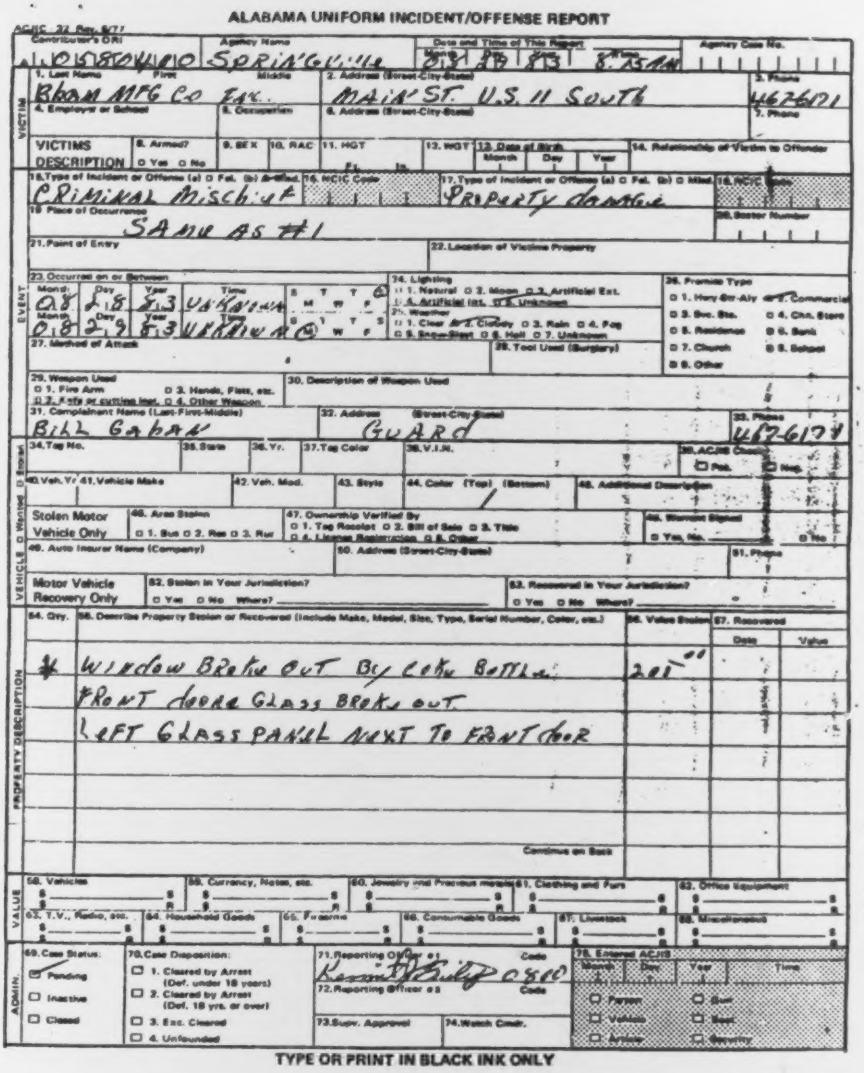
SeveRAl Shot WeRe FiReD
* AUTO Hit 3 TimeS *
ST ClaiR CT SHeRiFF DePT inVestigatin

Deputy SheRiFF FH BRown
PHo # 338 2277

	SIGNED Sgt J.P. Graham	
PAGE 1 - 1	RANK Sgt	BADGE # 12353

Form R v. 5/77

CLIENT COPY



ACJIC 32 Rev. 8/77

ALABAMA UNIFORM INCIDENT/OFFENSE REPORT

Contributor's ORI: AL0580400
Agency Name: Springville
Date and Time of This Report: Month 08 Day 29 Year 83 Time 8:15 AM
Agency Case No.:

VICTIM

1. Last Name First Middle: Bham MFG Co Inc.
2. Address (Street-City-State): Main St. U.S. 11 South
3. Phone: 4676171
4. Employer or School:
5. Occupation:
6. Address (Street-City-State):
7. Phone:

VICTIMS DESCRIPTION
8. Armed? ☐ Yes ☐ No
9. SEX
10. RAC
11. HGT Ft. In.
12. WGT
13. Date of Birth Month Day Year
14. Relationship of Victim to Offender

EVENT

15. Type of Incident or Offense (a) ☐ Fel. (b) ☐ Misd.: Criminal Mischief
16. NCIC Code
17. Type of Incident or Offense (a) ☐ Fel. (b) ☐ Misd.: Property damage
18. NCIC Code
19. Place of Occurrence: Same as #1
20. Sector Number
21. Point of Entry
22. Location of Victims Property
23. Occurred on or Between: Month 08 Day 28 Year 83 Time Unknown S T T [✓ S] M W F
Month 08 Day 29 Year 83 Time Unknown S T T S [✓ M] W F
24. Lighting ☐ 1. Natural ☐ 2. Moon ☐ 3. Artificial Ext. ☐ 4. Artificial Int. ☐ 5. Unknown
25. Weather ☐ 1. Clear [✓ 2. Cloudy] ☐ 3. Rain ☐ 4. Fog ☐ 5. Snow-Sleet ☐ 6. Hail ☐ 7. Unknown
26. Premise Type ☐ 1. Hwy-Str-Aly [✓ 2. Commercial] ☐ 3. Svc. Sta. ☐ 4. Chn. Store ☐ 5. Residence ☐ 6. Bank ☐ 7. Church ☐ 8. School ☐ 9. Other
27. Method of Attack
28. Tool Used (Burglary)
29. Weapon Used ☐ 1. Fire Arm ☐ 2. Knife or cutting Inst. ☐ 3. Hands, Fists, etc. ☐ 4. Other Weapon
30. Description of Weapon Used
31. Complainant Name (Last-First-Middle): Bill Gahan
32. Address (Street-City-State): Guard
33. Phone: 467-6171

VEHICLE ☐ Stolen ☐ Wanted

34. Tag No. 35. State 36. Yr. 37. Tag Color 38. V.I.N. 39. ACJIS Check ☐ Pos. ☐ Neg.
40. Veh. Yr. 41. Vehicle Make 42. Veh. Mod. 43. Style 44. Color (Top) / (Bottom) 45. Additional Description
Stolen Motor Vehicle Only
46. Area Stolen ☐ 1. Bus ☐ 2. Res ☐ 3. Rur
47. Ownership Verified By ☐ 1. Tag Receipt ☐ 2. Bill of Sale ☐ 3. Title ☐ 4. License Registration ☐ 5. Other
48. Warrant Signed ☐ Yes, No. ______ ☐ No
49. Auto Insurer Name (Company) 50. Address (Street-City-State) 51. Phone
Motor Vehicle Recovery Only
52. Stolen in Your Jurisdiction? ☐ Yes ☐ No Where? ______
53. Recovered in Your Jurisdiction? ☐ Yes ☐ No Where? ______

PROPERTY DESCRIPTION

54. Qty.	55. Describe Property Stolen or Recovered (Include Make, Model, Size, Type, Serial Number, Color, etc.)	56. Value Stolen	57. Recovered Date	57. Recovered Value
*	Window Broke out By Coke Bottle.	201^{00}		
	Front door Glass Broke out.			
	Left Glass panel next to Front door			
	Continue on Back			

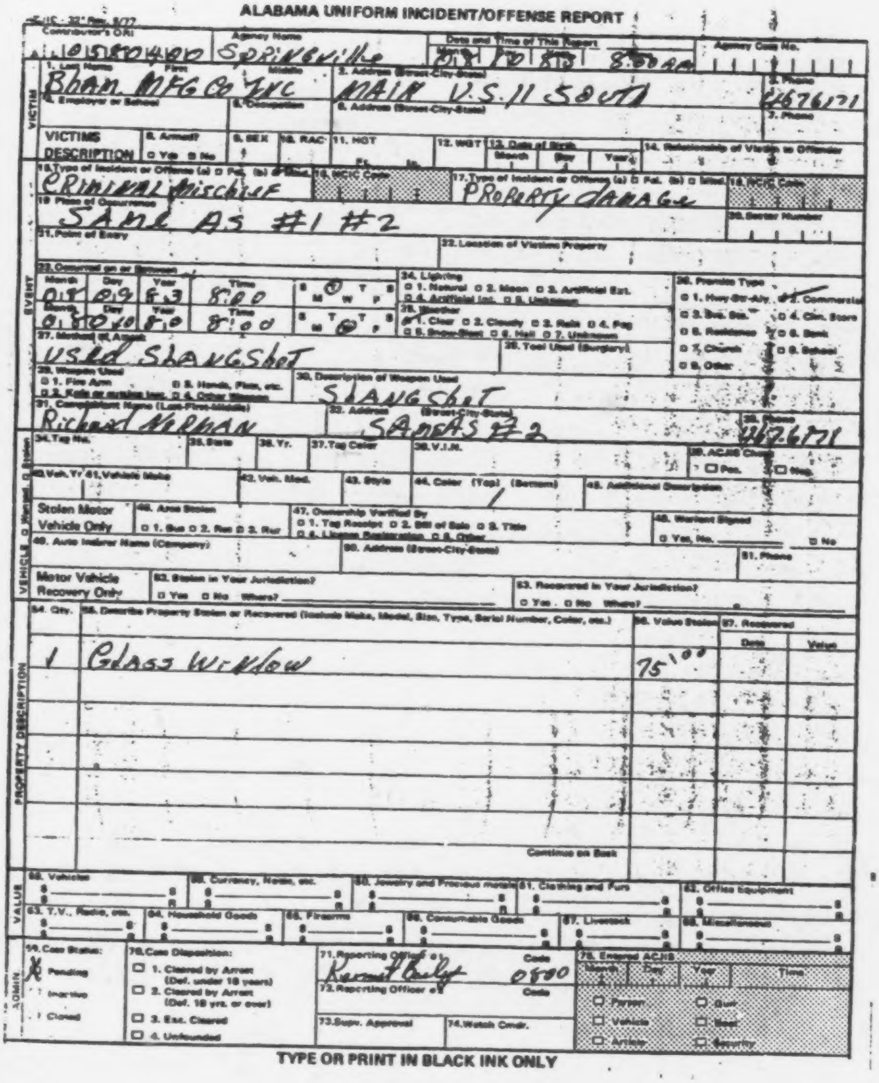
VALUE

58. Vehicles $ ____ S $ ____ R
59. Currency, Notes, etc. $ ____ S $ ____ R
60. Jewelry and Precious metals $ ____ S $ ____ R
61. Clothing and Furs $ ____ S $ ____ R
62. Office Equipment $ ____ S $ ____ R
63. T.V., Radio, etc. $ ____ S $ ____ R
64. Household Goods $ ____ S $ ____ R
65. Firearms $ ____ S $ ____ R
66. Consumable Goods $ ____ S $ ____ R
67. Livestock $ ____ S $ ____ R
68. Miscellaneous $ ____ S $ ____ R

ADMIN.

69. Case Status: ☑ Pending ☐ Inactive ☐ Closed
70. Case Disposition: ☐ 1. Cleared by Arrest (Def. under 18 years) ☐ 2. Cleared by Arrest (Def. 18 yrs. or over) ☐ 3. Exc. Cleared ☐ 4. Unfounded
71. Reporting Officer #1: Kermit Bailey Code: 0810
72. Reporting Officer #2 Code
73. Supv. Approval
74. Watch Cmdr.
75. Entered ACJIS Month Day Year Time ☐ Person ☐ Vehicle ☐ Article ☐ Gun ☐ Boat ☐ Security

TYPE OR PRINT IN BLACK INK ONLY



ASC - 32 Rev. 9/77

ALABAMA UNIFORM INCIDENT/OFFENSE REPORT

Contributor's ORI: 0580400

Agency Name: Springville

Date and Time of This Report: Month 08 Day 10 Year 83 8:00 AM

Agency Case No.:

VICTIM

1. Last Name First Middle: Bham MFG Co INC

2. Address (Street-City-State): MAIN U.S. 11 SOUTH

3. Phone: 4676171

4. Employer or School:

5. Occupation:

6. Address (Street-City-State):

7. Phone:

VICTIMS DESCRIPTION — 8. Armed? ☐ Yes ☐ No — 9. SEX — 10. RAC — 11. HGT Ft. In. — 12. WGT — 13. Date of Birth Month Day Year — 14. Relationship of Victim to Offender

EVENT

15. Type of Incident or Offense (a) ☐ Fel. (b) ☑ Misd.: CRIMINAL Mischief

16. NCIC Code:

17. Type of Incident or Offense (a) ☐ Fel. (b) ☐ Misd.: PROPERTY DAMAGE

18. NCIC Code:

19. Place of Occurrence: SAME AS #1 #2

20. Sector Number:

21. Point of Entry:

22. Location of Victims Property:

23. Occurred on or Between:

Month	Day	Year	Time	
08	09	83	8:00	S M [✓ T] W T F S
08	10	80	8:00	S M T [✓ W] T F S

24. Lighting: ☐ 1. Natural ☐ 2. Moon ☐ 3. Artificial Ext. ☐ 4. Artificial Int. ☐ 5. Unknown

25. Weather: ☑ 1. Clear ☐ 2. Cloudy ☐ 3. Rain ☐ 4. Fog ☐ 5. Snow-Sleet ☐ 6. Hail ☐ 7. Unknown

26. Premise Type: ☐ 1. Hwy-Str-Aly. ☑ 2. Commercial ☐ 3. Svc. Sta. ☐ 4. Cnv. Store ☐ 5. Residence ☐ 6. Bank ☐ 7. Church ☐ 8. School ☐ 9. Other

27. Method of Attack: USED SLANGSHOT

28. Tool Used (Burglary):

29. Weapon Used: ☐ 1. Fire Arm ☐ 2. Knife or cutting Inst. ☐ 3. Hands, Fists, etc. ☐ 4. Other Weapon

30. Description of Weapon Used: SLANGSHOT

31. Complainant Name (Last-First-Middle): Richard Nerman

32. Address (Street-City-State): SAME AS #2

33. Phone: 4676171

VEHICLE ☐ Stolen ☐ Wanted ☐ Stolen

34. Tag No. — 35. State — 36. Yr. — 37. Tag Color — 38. V.I.N. — 39. ACJIS Check ☐ Pos. ☐ Neg.

40. Veh. Yr. — 41. Vehicle Make — 42. Veh. Mod. — 43. Style — 44. Color (Top) (Bottom) / — 45. Additional Description

Stolen Motor Vehicle Only — 46. Area Stolen ☐ 1. Bus ☐ 2. Res ☐ 3. Rur — 47. Ownership Verified By ☐ 1. Tag Receipt ☐ 2. Bill of Sale ☐ 3. Title ☐ 4. License Registration ☐ 5. Other — 48. Warrant Signed ☐ Yes, No. ____ ☐ No

49. Auto Insurer Name (Company) — 50. Address (Street-City-State) — 51. Phone

Motor Vehicle Recovery Only — 52. Stolen in Your Jurisdiction? ☐ Yes ☐ No Where? ____ — 53. Recovered in Your Jurisdiction? ☐ Yes ☐ No Where? ____

PROPERTY DESCRIPTION

54. Qty.	55. Describe Property Stolen or Recovered (Include Make, Model, Size, Type, Serial Number, Color, etc.)	56. Value Stolen	57. Recovered Date	57. Recovered Value
1	Glass Window	75.00		

Continue on Back

VALUE

58. Vehicles $ — 59. Currency, Notes, etc. $ — 60. Jewelry and Precious metals $ — 61. Clothing and Furs $ — 62. Office Equipment $

63. T.V., Radio, etc. $ — 64. Household Goods $ — 65. Firearms $ — 66. Consumable Goods $ — 67. Livestock $ — 68. Miscellaneous $

ADMIN

69. Case Status: ☒ Pending ☐ Inactive ☐ Closed

70. Case Disposition: ☐ 1. Cleared by Arrest (Def. under 18 years) ☐ 2. Cleared by Arrest (Def. 18 yrs. or over) ☐ 3. Exc. Cleared ☐ 4. Unfounded

71. Reporting Officer: Kermit Baily — Code 0880

72. Reporting Officer: — Code

73. Supv. Approval — 74. Watch Cmdr.

75. Entered ACJIS: Month Day Year Time — ☐ Person ☐ Gun ☐ Vehicle ☐ Boat ☐ Article ☐ Security

TYPE OR PRINT IN BLACK INK ONLY

BURNS Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 30 AUG. 83
TIME OF REPORT 9:00 PM

CLIENT: B'ham MFG. Co. Springville, AL.
ADDRESS: P. O. Box 289 Springville AL. 35146
JOB NUMBER
LOCATION OF INCIDENT Main Office & Plant Office Areas
INCIDENT Windows Shattered by Foreign Objects
DATE OCCURRED 30 AUG. 83
TIME OCCURRED AM 7:15 [✓ PM]

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.) At approx 7:15, while making security checks of office area, I heard the sound of shattering glass. When I investigated I (Guard Wilkes) found that the second office window from the end at the west end of the building had been shattered, shortly thereafter (approx 2 minutes) two more windows were shattered - I contacted guard Carver in the computer area and informed him what was happening and instructed him to call Springville police while I went to a rear office and called the site supervisor Sgt. Gaham to inform him of the situation.

I informed him that Springville Police said they had only one officer and he was busy and would be here as soon as possible and that we called the St. Clair County Sheriffs Dept who stated they would be out immediately. (7:39pm) St. Clair County deputies and Springville Police Chief and another officer arrived on the scene. Springville Police came in and investigated the incident while St. Clair deputies remained at the gate.

The Sgt from St. Clair County stated that there was nothing they could do as long as Mr. Norman & B'ham MFG refused to enforce the injunction against the Strikers - because as we stood at the gate - three (3) more vehicles pulled up - bringing the total on the line to eight (8) vehicles.

SIGNED T. L. Wilkes
PAGE 1 of 2
RANK Guard
BADGE # 11050

Form R v. 5/77

CLIENT COPY

BURNS

Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 30 AUG. 83

TIME OF REPORT M. 9:00 p M.

CLIENT: B'ham MFG. Co. (Springville, AL.)

ADDRESS: P.O. Box 289 Springville, AL. 35146

JOB NUMBER N/A

LOCATION OF INCIDENT Main Office & Plant Office Areas

INCIDENT Windows Shattered by Foreign Objects

DATE OCCURRED 30 AUG. 83

TIME OCCURRED AM 7:15 [✓ PM]

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

The Springville Police Chief stated that if B'ham MFG. Co. (MR. Noman) would enforce the injunction (file contempt of court charges) against the strikers, they would be glad to arrest all those in violation at any given time. But otherwise, all they could do was come out check the scene, and make a report - unless we actually saw who was doing the shooting (which is very unlikely).

Note Windows are apparently being shot out with slingshots using marble stones from the strike area. three (3) stones were found in the plant office area where both front & side windows were shattered, also 1 window in receptionist area & 2 windows of west end offices in main office area. (total 5 windows shattered.)

St. Clair County deputies stated that if B'ham MFG. Co. wanted the injunction enforced they should go back to court and explain to the Judge what is going on and file a formal complaint.

Springville Police stated they would make a report since they made the actual investigation of the incident & not St. Clair County deputies - But both agencies assured us they would respond immediately whenever we called.

St. Clair deputies departed at 8:12pm - Springville Police departed at 8:27pm

Recalled Sgt. Gahan and reported action & statements of investigating agency (Springville Police)

SIGNED T. L. Wilkes

PAGE 2 of 2

RANK Guard

BADGE # 11050

Form R v. 5/77

CLIENT COPY

BURNS Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 30 AUG. 83

TIME OF REPORT 11:59 pm

CLIENT: B'ham MFG. Co. (Springville AL)

ADDRESS: P.O. Box 289 Springville AL. 35146

JOB NUMBER: N/A

LOCATION OF INCIDENT: Main Office + Plant Office Areas

INCIDENT: Objects Striking Building + Shattering Windows.

DATE OCCURRED 30 AUG. 83

TIME OCCURRED 9:14pm – 11:55 AM [✓ PM]

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

After Springville Police arrived a second time (9:20pm) I made a walking inspection of the area while guard Cover maintained watch at the Cutting machine. During this check I noticed that the passenger side windows of both Tractor Trailer rigs had been shattered, also the side window of the Blue Ford flatbed truck (no motor) parked behind the forklift repair shop.

Springville Police came out four(4) times: (1) 7:35pm, (2) 9:20pm, (3) 10:15pm, and (4) 11:48pm. Each time the strikers started up again after they departed.

11:42 Supervisor Marvin Isbell called to inquire about going into his office for employee files to notify employees not to report for work- But I informed him that we only had keys to the main office door and the gates.

11:46 Mr. L. Gorman called with special instruction that both gates be opened by 5:30am this morning (31 AUG. 83 wednesday) in case some employees are not notified and arrive early. and be prepared possibly for trouble.

Springville Police said they would be back early in the morning because they suspect there may be violence.

At this time mostly all windows to the main office area have been shattered and the building is still being TLW ~~struck~~ struck by projectiles, Guard Cover + Myself are alternating checks of the area against threat of futher damage- entry or even fire. Conclusion

SIGNED T. L. Wilkes

PAGE 1 of 1

RANK Guard

BADGE # 11050

Form R v. 5/77

CLIENT COPY

BURNS

Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 7 SEPT. 87

TIME OF REPORT M. M.

CLIENT: B'ham MFG. Co. (Springville, AL.)

ADDRESS:

JOB NUMBER:

LOCATION OF INCIDENT

INCIDENT

DATE OCCURRED TIME OCCURRED AM PM

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.) Guard C. Cover + Myself (Guard T. WILKES) relieved guard E. Grant at 5:30pm (30 minutes late due to Car Problems + Weather). Upon our arrival three (3) employees of Leeds Telephone Co. were here working on the phone system and the front door remained opened. Guard Cover remained in the office area with the telephone crew while I (Wilkes) went into the plant area. While checking the Cutting machine I noticed orange colored wires insight at the panel board. but since all lights were on, and the display screen on and the electric box was humming as usual, I did not suspect anything to be wrong. I then turned on the overhead lights and closed the rear door that we always left opened.

I then returned to the office area with the keys so that guard Cover could go outside and lock the front door and the gate since at this time (approx: 5:55pm) the telephone people were leaving and the Clean up crew was arriving. and since the ladies from the cleaning service had been threatend not to enter the plant, the stated they were afraid and asked if we could remain in The building until they completed cleaning. We explained that we both could not but we would make checks on them until they were ready to leave.

Also since the radio's were not working guard Cover + Myself thought it best to remain at least within earshot for our own safety. which meant when

SIGNED Tommy T. Wilkes

PAGE 1 of 3 RANK Security Officer BADGE # 11050

Form Rev. 5/77

BRANCH COPY

BURNS Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT

TIME OF REPORT M. M.

CLIENT:

ADDRESS:

JOB NUMBER | LOCATION OF INCIDENT

INCIDENT

DATE OCCURRED | TIME OCCURRED | AM | PM

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

Either of us went to the office area the other came to the downstairs door, and when he opened the gate at (approx: 6:45pm) to let the cleaning service out I was at the front door area of the plant. (these measures were taken due to the incidents which happened the previous tuesday (30 AUG 83) and statements by the Springville Police that they could not baby sit us guards- we were on our own)

Yet at no time were either of us away from the main area for more than ten (10) minutes except when the cleaning crew was leaving and there was a nail throwing incident in which the strikers would throw a handful of nails as fast as guard Caver picked them up. This lasted no more than fifteen (15) minutes total. after which we returned to the plant area and checked both the compressor and the cutting machine and still nothing seemed unusual.

Sometime between 8:30 & 9:00pm Guard Caver said he was going to the lunchroom to heat up our lunches, but he returned shortly to say that we needed to turn out the upstairs lights left on by the Cleaning Service. at which time I again accompanied him to the office area. (especially since at this time the outside area was in total darkness due to lights being knocked out) When he returned guard Caver asked me if I remembered the Computer/T.V. being on earlier and I told him I did not. he told me it was and that he had turned it off.

SIGNED Tommy L. Wilkes

PAGE 2 of 3 | RANK Security Officer | BADGE # 11050

Form Rev. 5/77

BRANCH COPY

BURNS

Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out-of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT

TIME OF REPORT M. M.

CLIENT:

ADDRESS:

JOB NUMBER

LOCATION OF INCIDENT

INCIDENT

DATE OCCURRED

TIME OCCURRED AM PM

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

While standing at the top of the stairs in the receptionist area we heard a sound from down stairs which led us to believe someone was downstairs but when we came down the stairs we saw no one or nothing unusual. We then returned to the main area where we remained until this morning at 5:15 am. At which time we came out to the gate and picked up mails and prepared for the arrival of the employees coming to work.

Also there were no rounds made outside after dark due to the rainy weather as well as no lights on. and for our own safety.

At this time there still had been no indication of anything out of the ordinary taken place.

SIGNED Tommy L. Wilkes

PAGE 3 of 3

RANK Security Officer

BADGE # 11050

Form Rev. 5/77

BRANCH COPY

BURNS

Burns International Security Services, Inc. Incident Report

Use this form to report any irregularities or out - of - the ordinary incident occurring during your assignment. Use additional forms if necessary.

DATE OF REPORT 8/28/83
TIME OF REPORT 6 Am M. M.

CLIENT: Birmingham Mfg Co
ADDRESS: Springville
JOB NUMBER: / LOCATION OF INCIDENT MRS R. Cowan's Window
INCIDENT 2 Broken Window's 11 + Corner Office
DATE OCCURRED 8/28/83 TIME OCCURRED Night of 28TH AM PM

DETAILS AND CIRCUMSTANCES OF INCIDENT (Answer all of the following in the report: WHO, WHAT, WHERE, WHEN, & HOW.)

Two large Plate Glass Window's was broken out, Sunday night, on duty Guards Did not hear or see incident when it Occured

Guards Majors
Williams

SIGNED Sh. P. Graham
PAGE 1 of 1 RANK Sgt BADGE # 12353

Form R v. 5/77

CLIENT COPY

12/19/83

One day several weeks ago, one man (whom I can identify) yelled several times at me that he knew where I lived and that he would see me later at my house.

This same thing happened several days after the first time with the same man involved.

JOE LANGFORD

12/19/83

On several occasions the black man identified to me as Woody has threatened me verbally and has waved the club he carries most of the time at me.

JOE LANGFORD

On the day my helper and I assisted in getting a security light ready to mount on a pole, at least 2 steel balls were shot near the building where we worked. These could have been aimed at any of several people.

JOE LANGFORD

ALABAMA UNIFORM INCIDENT/OFFENSE REPORT

Contributor's ORI: AL0151800
Agency Name: Springville AL
Date and Time of This Report: Month 05 Day 25 Year 83 Time 6:30 AM
Agency Case No.:

VICTIM

1. Last Name First Middle: Birmingham MFG Co. Inc.
2. Address (Street-City-State): MAIN ST. SPRINGVILLE
3. Phone: 467 6
4. Employer or School:
5. Occupation:
6. Address (Street-City-State):
7. Phone:

VICTIMS DESCRIPTION
8. Armed? ○ Yes ○ No
9. SEX
10. RAC
11. HGT Ft. In.
12. WGT
13. Date of Birth Month Day Year
14. Relationship of Victim to Offender

EVENT

15. Type of Incident or Offense (a) ○ Fel. (b) ○ Misd.: Reckless Endangerment
16. NCIC Code
17. Type of Incident or Offense (a) ○ Fel. (b) ○ Misd.
18. NCIC Code
19. Place of Occurrence: ENTRANCE OF Bham MFG. Co Inc
20. Sector Number
21. Point of Entry
22. Location of Victims Property: DRIVEWAY ENTRANCE
23. Occurred on or Between: Month 05 Day 25 Year 83 Time 6:30AM S M T [✓ W] T F S
Month Day Year Time S M T W T F S
24. Lighting: ☑ 1. Natural ○ 2. Moon ○ 3. Artificial Ext. ○ 4. Artificial Int. ○ 5. Unknown
25. Weather: ☑ 1. Clear ○ 2. Cloudy ○ 3. Rain ○ 4. Fog ○ 5. Snow/Sleet ○ 6. Hail ○ 7. Unknown
26. Premise Type: ○ 1. Hwy-Str-Aly ☑ 2. Commercial ○ 3. Svc. Sta. ○ 4. Chn. St. ○ 5. Residence ○ 6. Bank ○ 7. Church ○ 8. School ○ 9. Other
27. Method of Attack
28. Tool Used (Burglary)
29. Weapon Used: ○ 1. Fire Arm ○ 2. Hands, Fists, etc. ○ 3. Knife or cutting inst. ○ 4. Other Weapon
30. Description of Weapon Used: CLUBS And Rocks
31. Complainant Name (Last-First-Middle)
32. Address (Street-City-State)
33. Phone

VEHICLE

34. Tag No.
35. State
36. Yr.
37. Tag Color
38. V.I.N.
39. ACJIS Check ☐ Pos. ☐ Neg.
40. Veh. Yr.
41. Vehicle Make
42. Veh. Model
43. Style
44. Color (Top) (Bottom)
45. Additional Description

Stolen Motor Vehicle Only
46. Area Stolen ○ 1. Bus ○ 2. Res ○ 3. Rur
47. Ownership Verified By ○ 1. Tag Receipt ○ 2. Bill of Sale ○ 3. Title ○ 4. License Registration ○ 5. Other
48. Warrant Signed ○ Yes, No. ______ ○ No
49. Auto Insurer Name (Company)
50. Address (Street-City-State)
51. Phone

Motor Vehicle Recovery Only
52. Stolen in Your Jurisdiction? ○ Yes ○ No Where? ______
53. Recovered in Your Jurisdiction? ○ Yes ○ No Where? ______

PROPERTY DESCRIPTION

54. Qty.
55. Describe Property Stolen or Recovered (Include Make, Model, Size, Type, Serial Number, Color, etc.)
56. Value Stolen
57. Recovered Date Value

While CROSSING The picket Line 3
Veh. WAS damagu With Clubs And Rock.
driver OF ONE Veh. WAS inJure
(4) ARREST WAS made.

Continue on Back

VALUE

58. Vehicles $ ______ $
59. Currency, Notes, etc. $ ______ $
60. Jewelry and Precious metals $ ______ $
61. Clothing and Furs $ ______ $
62. Office Equipment $ ______
63. T.V., Radio, etc. $ ______ $
64. Household Goods $ ______ $
65. Firearms $ ______ $
66. Consumable Goods $ ______ $
67. Livestock $ ______ $
68. Miscellaneous $ ______

ADMIN.

69. Case Status: ☐ Pending ☐ Inactive ☐ Closed
70. Case Disposition: ☐ 1. Cleared by Arrest (Def. under 18 years) ☐ 2. Cleared by Arrest (Def. 18 yrs. or over) ☐ 3. Exc. Cleared ☐ 4. Unfounded
71. Reporting Officer #1: Chief Kermit [illegible] Code
72. Reporting Officer #2: [illegible] Martin Code
73. Supv. Approval
74. Watch Cmdr.
75. Entered ACJIS Month Day Year Time ☐ Person ☐ Gun ☐ Vehicle ☐ Boat ☐ Article ☐ Security

TYPE OR PRINT IN BLACK INK ONLY

ACJIC - 34 Rev. 9/77

ALABAMA UNIFORM ARREST REPORT

IDENTIFICATION

1. BID NO. SID
2. FBI NO. FBI
3. Contributor's ORI: A C 0 5 8 0 4 0 0
4. Agency Name: Springville Al
5. Agency Case No. OCA
6. Last Name: Wooly First: Bob Middle: G Jr.
7. Alias AKA
8. SEX: M
9. RAC: B
10. HGT: 5 Ft. 9 In.
11. WGT: 150
12. EYE: Bru
13. HAI
14. SKN
15. Scars, Marks, Tattoos and Amputations SMT: none
16. Place of Birth (City-Town-County) POB: Tullaposa Co.
17. State: Al
18. Social Sec. No. SOC: 420626751
19. Date of Birth DOB: Month 12 Day 22 Year 47
20. Miscellaneous No. (Indicate type)
21. Fingerprint Class (Leave Blank) FPC — Key Major Primary Secdy. Sub-Secondary Final
HENRY CLASS: M ☐ ☐
NCIC CLASS
22. Identification Comments ICO
23. Home Address Street: 807 Mtn. Dr. City-Town-County: Springville State: Al St.C
24. Res. Phone: 467-6564
25. Occupation (Be Specific): Fitter
26. Employer (Name of Company or School): B'Haw Mfg.
27. Business Address (Street-City-State): Springville Al Hiway 11
28. Bus. Phone

ARREST

29. Location of Arrest (Street-City-State): Main Entrance Gate. B'Haw MfG.
30. Sector Number
31. Arrested for your Jurisdiction? ☑ Yes ☐ Other Ala. Agency ☐ Out-of-State
32. Condition of Arrestee: ☐ 1. Drunk ☐ 2. Drinking ☐ 3. Narcotic ☑ 4. Sober
33. Resist Arrest? ☐ Yes ☑ No
34. Injuries? ☐ Officer ☐ Arrestee
35. Armed? ☑ Yes ☐ No
36. Description of Weapon: 3' wood Club
37. Date of Arrest DOA: Month 05 Day 25 Year 83
38. Time of Arrest: 0700
39. S M T [✓ W] T F S
40. Type Arrest: ☑ On-View ☐ Call ☐ Warrant
41. Arrested Before? ☑ Yes ☐ No ☐ Unk.
42. Charge - 1 AOL: wreckless Endangerment
A. Offense Date DOO: 052583
43. NCIC Code AON
44. ☑ Misd. ☐ Felony
B. Time of Offense: 0700
45. State Statute Citation CIT
46. Warrant No.
47. Date Issued
48. Charge - 2 AOL
A. Offense Date DOO
49. NCIC Code AON
50. ☐ Misd. ☐ Felony
B. Time of Offense
51. State Statute Citation CIT
52. Warrant No.
53. Date Issued
54. Charge - 3
A. Offense Date DOO
55. NCIC Code AON
56. ☐ Misd. ☐ Felony
B. Time of Offense
57. State Statute Citation CIT
58. Warrant No.
59. Date Issued
60. Charge - 4
A. Offense Date DOO
61. NCIC Code AON
62. ☐ Misd. ☐ Felony
B. Time of Offense
63. State Statute Citation CIT
64. Warrant No.
65. Date Issued

OBTS No. A- 1223211

66. Arrest Disposition ADN: ☐ 1. Held ☐ 2. Relsd. ☐ 3. TOT-LE ☐ 4. Bail ☐ 5. TOT-W ☐ 6. REF-JUV ☐ 7. Other
67. If out on Release, what type?
68. Additional Arrest Disposition ADD
69. Arrested with (1) Accomplice Full Name
70. Arrested with (2) Accomplice Full Name

EVIDENCE

71. Veh. Yr.
72. Vehicle Make
73. Veh. Mod.
74. Style
75. Color (Top) (Bottom)
76. Tag No.
77. State
78. Yr.
79. V.I.N.
80. Impounded? ☐ Yes ☐ No
81. Location
82. Other Evidence Seized (Court Papers in Arrestee's Possession?)

NARRATIVE

83. Circumstances Leading to, or Resulting in, Arrest. Include Disposition of Items Seized. (Describe Briefly)

Hit Auto Entering plant with Club.

Continue on Back

84. Arresting Officer - 1 (Last Name-First-Middle): John Goodwin
85. Code No.: 0811
86. Arresting Officer - 2 (Last Name-First-Middle): Larry Martin
87. Code No.: 0812

AC/IC 34 Rev. 6/77

ALABAMA UNIFORM ARREST REPORT

IDENTIFICATION

1. SID NO. SID
2. FBI NO. FBI
3. Contributor's ORI A L 0 5 8 0 4 0 0
4. Agency Name Springville Al
5. Agency Case No. OCA
6. Last Name Phillips First William Middle B
7. Alias AKA
8. SEX M
9. RAC W
10. HGT 6 Ft. 2 in.
11. WGT 198
12. EYE BLK
13. HAI
14. SKN
15. Scars, Marks, Tattoos and Amputations SMT
16. Place of Birth (City-Town-County) POB Steele, St. Clair
17. State Al
18. Social Sec. No. SOC 420427108
19. Date of Birth DOB Month 07 Day 06 Year 36
20. Miscellaneous No. (Indicate type)
21. Fingerprint Class (Leave Blank) FPC Key Major Primary Scdy. Sub-Secondary Final
HENRY CLASS M Y
NCIC CLASS
22. Identification Comments ICO
23. Home Address Street Box 230 City-Town-County Steele Al State St Clair
24. Res. Phone 594-5804
25. Occupation (Be Specific) Fitter
26. Employer (Name of Company or School) B'Ham Mfg.
27. Business Address (Street-City-State) Hiway 11 So. Springville Al
28. Bus. Phone

ARREST

29. Location of Arrest (Street-City-State) Main gate. B'Ham Mfg.
30. Sector Number
31. Arrested for your Jurisdiction? ☑ Yes ☐ Other Ala. Agency ☐ Out-of-State
32. Condition of Arrestee ☐ 1. Drunk ☐ 2. Drinking ☐ 3. Narcotic ☑ Sober
33. Resist Arrest? ☑ Yes ☐ No
34. Injuries? ☐ Officer ☐ Arrestee
35. Armed? ☐ Yes ☑ No
36. Description of Weapon none
37. Date of Arrest DOA Month 05 Day 25 Year 83
38. Time of Arrest 0730
39. S M T [✓ W] T F S
40. Type Arrest ☑ On-View ☐ Call ☐ Warrant
41. Arrested Before? ☐ Yes ☑ No ☐ Unk.
42. Charge - 1 AOL Harrassment
A. Offense Date DOO 0 5 2 5 8 3
43. NCIC Code AON
44. ☑ Misd. ☐ Felony
B. Time of Offense 0730
45. State Statute Citation CIT
46. Warrant No.
47. Date Issued
48. Charge - 2 AOL
A. Offense Date DOO
49. NCIC Code AON
50. ☐ Misd. ☐ Felony
B. Time of Offense
51. State Statute Citation CIT
52. Warrant No.
53. Date Issued
54. Charge - 3
A. Offense Date DOO
55. NCIC Code AON
56. ☐ Misd. ☐ Felony
B. Time of Offense
57. State Statute Citation CIT
58. Warrant No.
59. Date Issued
60. Charge - 4
A. Offense Date DOO
61. NCIC Code AON
62. ☐ Misd. ☐ Felony
B. Time of Offense
63. State Statute Citation CIT
64. Warrant No.
65. Date Issued
OBTS No. A- 1223212
66. Arrest Disposition ADN ☐ 1. Held ☐ 2. Relsd. ☐ 3. TOT-LE ☐ 4. Bail ☐ 5. TOT-W ☐ 6. REF-JUV ☐ 7. Other
67. If out on Release, what type?
68. Additional Arrest Disposition ACD
69. Arrested with (1) Accomplice Full Name
70. Arrested with (2) Accomplice Full Name

EVIDENCE

71. Veh. Yr.
72. Vehicle Make
73. Veh. Mod.
74. Style
75. Color (Top) / (Bottom)
76. Tag No.
77. State
78. Yr.
79. V.I.N.
80. Impounded? ☐ Yes ☐ No
81. Location
82. Other Evidence Seized (Court Papers in Arrestee's Possession?)

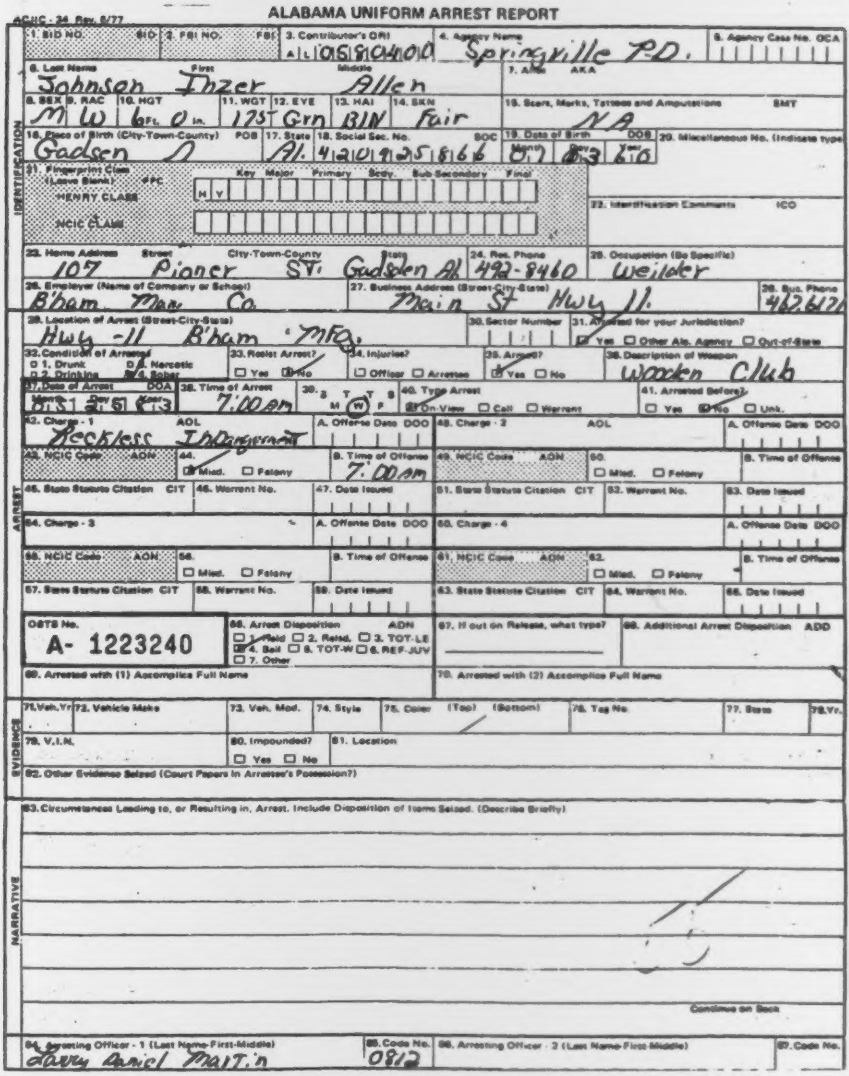
NARRATIVE

83. Circumstances Leading to, or Resulting in, Arrest. Include Disposition of Items Seized. (Describe Briefly)
Verbal Abuse

Continue on Back

84. Arresting Officer - 1 (Last Name-First-Middle) Larry Martin
85. Code No. 0812
86. Arresting Officer - 2 (Last Name-First-Middle) Ray E. Phillips
87. Code No. 417

TYPE OR PRINT IN BLACK INK ONLY



ACJIC - 34 Rev. 6/77

ALABAMA UNIFORM ARREST REPORT

IDENTIFICATION

1. SID NO. SID
2. FBI NO. FBI
3. Contributor's ORI: AL 0590400
4. Agency Name: Springville P.D.
5. Agency Case No. OCA
6. Last Name: Johnson First: Inzer Middle: Allen
7. Alias AKA
8. SEX: M
9. RAC: W
10. HGT: 6 Ft. 0 In.
11. WGT: 175
12. EYE: Grn
13. HAI: BlN
14. SKN: Fair
15. Scars, Marks, Tattoos and Amputations SMT: NA
16. Place of Birth (City-Town-County) POB: Gadsen
17. State: Al.
18. Social Sec. No. SOC: 420925866
19. Date of Birth DOB: Month 07 Day 03 Year 60
20. Miscellaneous No. (Indicate type)
21. Fingerprint Class (Leave Blank) FPC: Key Major Primary Scdy. Sub Secondary Final
HENRY CLASS: H Y
NCIC CLASS
22. Identification Comments ICO
23. Home Address Street City-Town-County State: 107 Pioner ST. Gadsden Al
24. Res. Phone: 492-8460
25. Occupation (Be Specific): Weilder
26. Employer (Name of Company or School): B'ham Man Co.
27. Business Address (Street-City-State): Main St Hwy 11.
28. Bus. Phone: 462.6171

ARREST

29. Location of Arrest (Street-City-State): Hwy -11 B'ham MFG.
30. Sector Number
31. Arrested for your Jurisdiction? ☑ Yes ☐ Other Ala. Agency ☐ Out-of-State
32. Condition of Arrestee: ☐ 1. Drunk ☐ 2. Drinking ☐ 3. Narcotic ☑ 4. Sober
33. Resist Arrest? ☐ Yes ☑ No
34. Injuries? ☐ Officer ☐ Arrestee
35. Armed? ☑ Yes ☐ No
36. Description of Weapon: Wooden Club
37. Date of Arrest DOA: Month 05 Day 25 Year 83
38. Time of Arrest: 7:00 am
39. S M T [✓ W] T F S
40. Type Arrest: ☑ On-View ☐ Call ☐ Warrant
41. Arrested Before? ☐ Yes ☑ No ☐ Unk.
42. Charge - 1 AOL: Reckless Indangerment
A. Offense Date DOO
43. NCIC Code AON
44. ☑ Misd. ☐ Felony
B. Time of Offense: 7:00 am
45. State Statute Citation CIT
46. Warrant No.
47. Date Issued
48. Charge - 2 AOL
A. Offense Date DOO
49. NCIC Code AON
50. ☐ Misd. ☐ Felony
B. Time of Offense
51. State Statute Citation CIT
52. Warrant No.
53. Date Issued
54. Charge - 3
A. Offense Date DOO
55. NCIC Code AON
56. ☐ Misd. ☐ Felony
B. Time of Offense
57. State Statute Citation CIT
58. Warrant No.
59. Date Issued
60. Charge - 4
A. Offense Date DOO
61. NCIC Code AON
62. ☐ Misd. ☐ Felony
B. Time of Offense
63. State Statute Citation CIT
64. Warrant No.
65. Date Issued
OBTS No. A- 1223240
66. Arrest Disposition ADN: ☐ 1. Held ☐ 2. Relsd. ☐ 3. TOT-LE ☑ 4. Bail ☐ 5. TOT-W ☐ 6. REF-JUV ☐ 7. Other
67. If out on Release, what type?
68. Additional Arrest Disposition ADD
69. Arrested with (1) Accomplice Full Name
70. Arrested with (2) Accomplice Full Name

EVIDENCE

71. Veh. Yr.
72. Vehicle Make
73. Veh. Mod.
74. Style
75. Color (Top) (Bottom)
76. Tag No.
77. State
78. Yr.
79. V.I.N.
80. Impounded? ☐ Yes ☐ No
81. Location
82. Other Evidence Seized (Court Papers in Arrestee's Possession?)

NARRATIVE

83. Circumstances Leading to, or Resulting in, Arrest. Include Disposition of Items Seized. (Describe Briefly)

Continue on Back

84. Arresting Officer - 1 (Last Name-First-Middle): Larry Daniel Martin
85. Code No.: 0812
86. Arresting Officer - 2 (Last Name-First-Middle)
87. Code No.

ACJIC - 34 Rev. 9/77

ALABAMA UNIFORM ARREST REPORT

IDENTIFICATION

1. SID NO. SID
2. FBI NO. FBI
3. Contributor's ORI A L 0 5 8 0 4 0 0
4. Agency Name Springville P.D.
5. Agency Case No. OCA
6. Last Name Peoples First Harold Middle Theodore
7. Alias AKA
8. SEX M
9. RAC W
10. HGT 6 Ft. 5 In.
11. WGT 145
12. EYE BRO
13. HAI Bro
14. SKN Fair
15. Scars, Marks, Tattoos and Amputations SMT
16. Place of Birth (City-Town-County) POB Trussville Al.
17. State Al.
18. Social Sec. No. SOC 4 2 4 4 4 0 3 5 2
19. Date of Birth DOB Month 0 7 Day 0 2 Year 3 2
20. Miscellaneous No. (Indicate type)
21. Fingerprint Class (Leave Blank) FPC Key Major Primary Subj. Sub-Secondary Final
HENRY CLASS H Y
NCIC CLASS
22. Identification Comments ICD
23. Home Address Street 609 Brooks Lane City-Town-County Springville State Al.
24. Res. Phone 467-6413
25. Occupation (Be Specific) Maintaince Worker.
26. Employer (Name of Company or School) B'ham Mfg. Co.
27. Business Address (Street-City-State) Main St. Hwy-11
28. Bus. Phone 467-6171

ARREST

29. Location of Arrest (Street-City-State) Hwy 11 Bham MFg Co.
30. Sector Number
31. Arrested for your Jurisdiction? ☑ Yes ☐ Other Ala. Agency ☐ Out-of-State
32. Condition of Arrestee ☐ 1. Drunk ☐ 2. Drinking ☐ 3. Narcotic ☑ 4. Sober
33. Resist Arrest? ☐ Yes ☑ No
34. Injuries? (NO) ☐ Officer ☐ Arrestee
35. Armed? ☑ Yes ☐ No
36. Description of Weapon Rocks & wooden club
37. Date of Arrest DOA Month 0 7 Day 1 5 Year 8 3
38. Time of Arrest 7:10 Am
39. S M T [✓ W] T F S
40. Type Arrest ☑ On-View ☐ Call ☐ Warrant
41. Arrested Before? ☐ Yes ☑ No ☐ Unk.
42. Charge - 1 AOL Reckless Indangerment
A. Offense Date DOO
43. NCIC Code AON
44. ☑ Misd. ☐ Felony
B. Time of Offense 7:00 Am
45. State Statute Citation CIT
46. Warrant No.
47. Date Issued
48. Charge - 2 AOL
A. Offense Date DOO
49. NCIC Code AON
50. ☐ Misd. ☐ Felony
B. Time of Offense
51. State Statute Citation CIT
52. Warrant No.
53. Date Issued
54. Charge - 3
A. Offense Date DOO
55. NCIC Code AON
56. ☐ Misd. ☐ Felony
B. Time of Offense
57. State Statute Citation CIT
58. Warrant No.
59. Date Issued
60. Charge - 4
A. Offense Date. DOO
61. NCIC Code AON
62. ☐ Misd. ☐ Felony
B. Time of Offense
63. State Statute Citation CIT
64. Warrant No.
65. Date Issued
OBTS No. A- 1223241
66. Arrest Disposition ADN ☐ 1. Field ☐ 2. Relsd. ☐ 3. TOT-LE ☑ 4. Bail ☐ 5. TOT-W ☐ 6. REF-JUV ☐ 7. Other
67. If out on Release, what type?
68. Additional Arrest Disposition ADD
69. Arrested with (1) Accomplice Full Name
70. Arrested with (2) Accomplice Full Name

EVIDENCE

71. Veh. Yr.
72. Vehicle Make
73. Veh. Mod.
74. Style
75. Color (Top) (Bottom)
76. Tag No.
77. State
78. Yr.
79. V.I.N.
80. Impounded? ☐ Yes ☐ No
81. Location
82. Other Evidence Seized (Court Papers in Arrestee's Possession?)

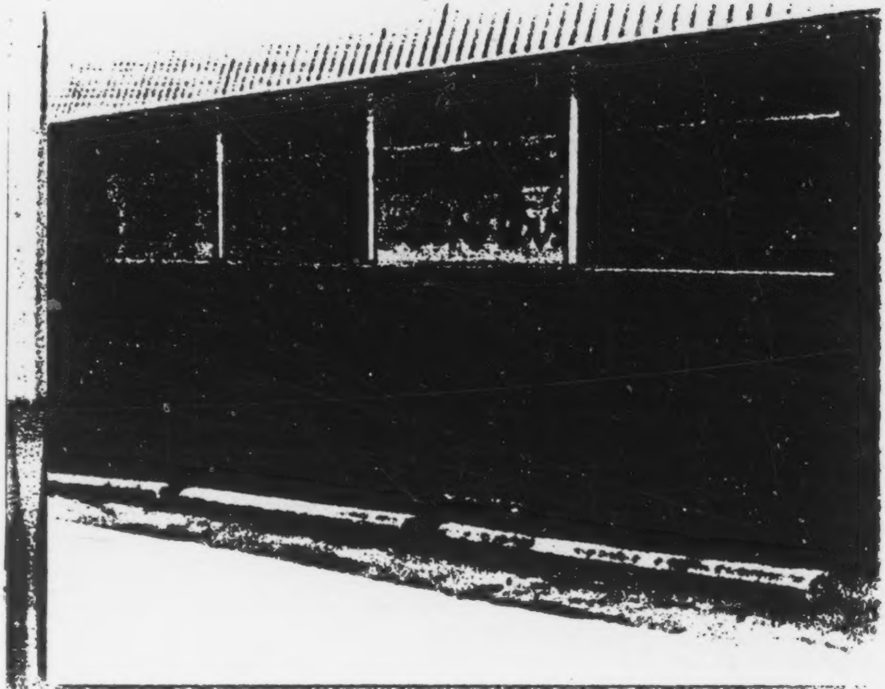
NARRATIVE

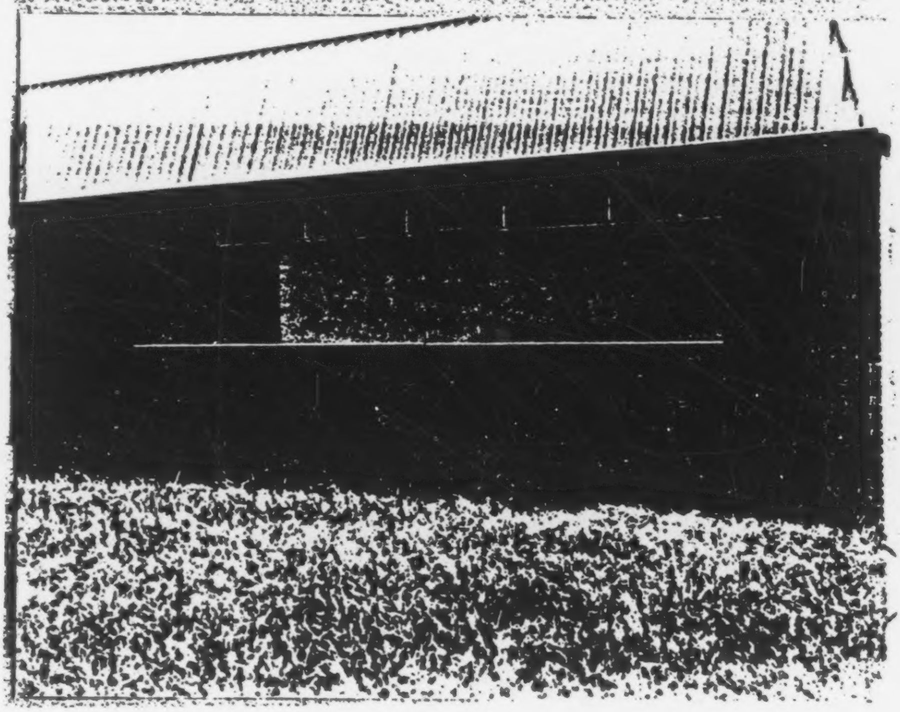
83. Circumstances Leading to, or Resulting in, Arrest. Include Disposition of Items Seized. (Describe Briefly)

55

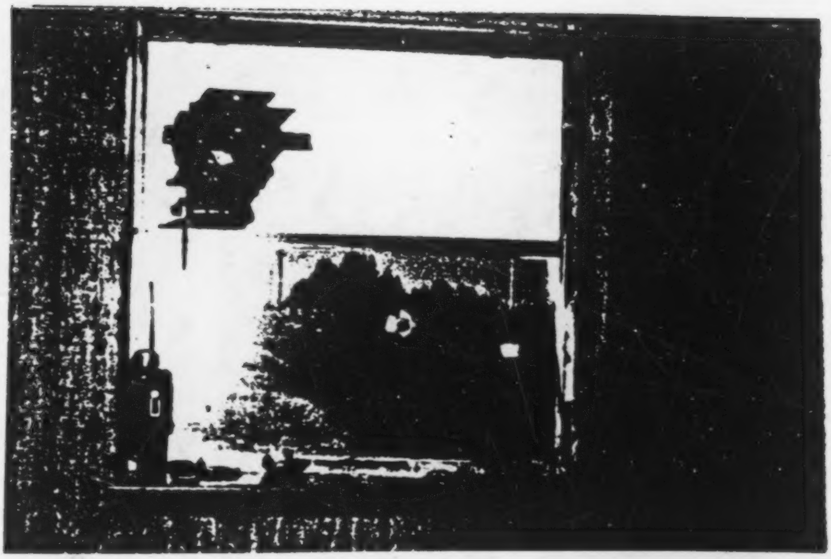
Continue on Back

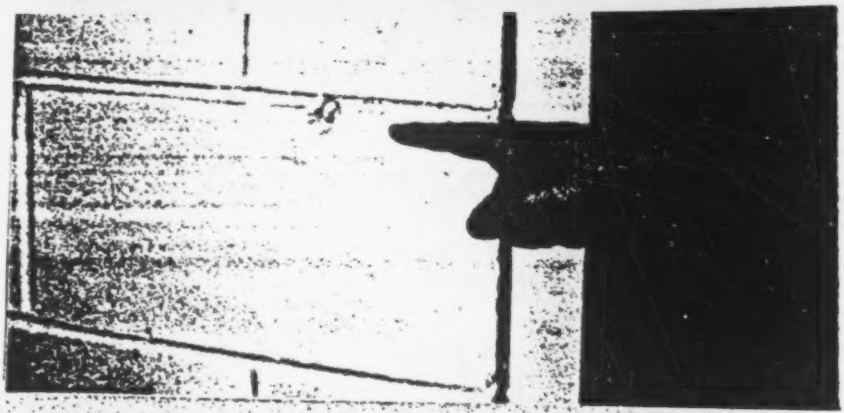
84. Arresting Officer - 1 (Last Name-First-Middle)
85. Code No.
86. Arresting Officer - 2 (Last Name-First-Middle)
87. Co

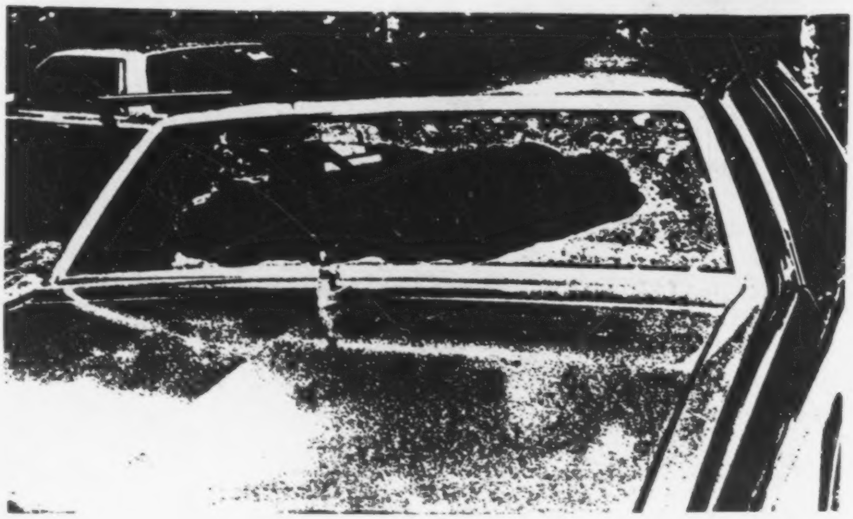




BIRMINGHAM MFG. CO., IN







ALABAMA UNIFORM INCIDENT/OFFENSE REPORT

ACJIC - 32 Rev. 8/77

Contributor's ORI AL0048010100	Agency Name Blount Co. S.O.	Date and Time of This Report Month 07 Day 20 Year 83 Time 8:50 AM	Agency Case No.

VICTIM

1. Last Name Best First Edward Middle
2. Address (Street-City-State) RT#2 Box 406 Oneonta AL
3. Phone 625-4097
4. Employer or School
5. Occupation
6. Address (Street-City-State)
7. Phone

VICTIMS DESCRIPTION 8. Armed? ☐ Yes ☐ No 9. SEX 10. RAC 11. HGT Ft. In. 12. WGT 13. Date of Birth Month Day Year 14. Relationship of Victim to Offender

EVENT

15. Type of Incident or Offense (a) ☐ Fel. (b) ☑ Misd. Destruction of Property
16. NCIC Code
17. Type of Incident or Offense (a) ☐ Fel. (b) ☐ Misd.
18. NCIC Code
19. Place of Occurrence RT# 2 Box 406 Oneonta AL
20. Sector Number
21. Point of Entry
22. Location of Victims Property

23. Occurred on or Between
Month 07 Day 19 Year 83 Time 11:25 P.M. S M T W T F S
Month Day Year Time S M T W T F S

24. Lighting ☐ 1. Natural ☐ 2. Moon ☐ 3. Artificial Ext. ☐ 4. Artificial Int. ☐ 5. Unknown
25. Weather ☐ 1. Clear ☐ 2. Cloudy ☐ 3. Rain ☐ 4. Fog ☐ 5. Snow-Sleet ☐ 6. Hail ☐ 7. Unknown
26. Premise Type ☐ 1. Hwy-Str-Aly ☐ 2. Commercial ☐ 3. Svc. Sta. ☐ 4. Chn. Store ☑ 5. Residence ☐ 6. Bank ☐ 7. Church ☐ 8. School ☐ 9. Other

27. Method of Attack Shot back window of vehicle out
28. Tool Used (Burglary) Shotgun
29. Weapon Used ☐ 1. Fire Arm ☐ 2. Knife or cutting inst. ☐ 3. Hands, Fists, etc. ☐ 4. Other Weapon
30. Description of Weapon Used
31. Complainant Name (Last-First-Middle) SAME
32. Address (Street-City-State) SAME
33. Phone

VEHICLE ☐ Stolen ☐ Wanted

34. Tag No. 35. State 36. Yr. 37. Tag Color 38. V.I.N. 39. ACJIS Check ☐ Pos. ☐ Neg.
40. Veh. Yr. 41. Vehicle Make 42. Veh. Mod. 43. Style 44. Color (Top) / (Bottom) 45. Additional Description

Stolen Motor Vehicle Only
46. Area Stolen ☐ 1. Bus ☐ 2. Res ☐ 3. Rur
47. Ownership Verified By ☐ 1. Tag Receipt ☐ 2. Bill of Sale ☐ 3. Title ☐ 4. License Registration ☐ 5. Other
48. Warrant Signed ☐ Yes, No. ______ ☐ No
49. Auto Insurer Name (Company) 50. Address (Street-City-State) 51. Phone

Motor Vehicle Recovery Only
52. Stolen in Your Jurisdiction? ☐ Yes ☐ No Where? ______
53. Recovered in Your Jurisdiction? ☐ Yes ☐ No Where? ______

PROPERTY DESCRIPTION

54. Qty.	55. Describe Property Stolen or Recovered (Include Make, Model, Size, Type, Serial Number, Color, etc.)	56. Value Stolen	57. Recovered Date	Value
	Mr Bests' back window was shot out of his company car while sitting in his driveway.			

Continue on Back

VALUE

58. Vehicles $ ______ S $ ______ R
59. Currency, Notes, etc. $ ______ S $ ______ R
60. Jewelry and Precious metals $ ______ S $ ______ R
61. Clothing and Furs $ ______ S $ ______ R
62. Office Equipment $ ______ S $ ______ R
63. T.V., Radio, etc. $ ______ S $ ______ R
64. Household Goods $ ______ S $ ______ R
65. Firearms $ ______ S $ ______ R
66. Consumable Goods $ ______ S $ ______ R
67. Livestock $ ______ S $ ______ R
68. Miscellaneous $ ______ S $ ______ R

69. Case Status: ☐ Pending ☐ Inactive ☐ Closed
70. Case Disposition: ☐ 1. Cleared by Arrest (Def. under 18 years) ☐ 2. Cleared by Arrest (Def. 18 yrs. or over) ☐ 3. Exc. Cleared ☐ 4. Unfounded
71. Reporting Officer #1 Staten Larry Code 201
72. Reporting Officer #2 Code
73. Supv. Approval
74. Watch Cmdr.
75. Entered ACJIS Month Day Year Time ☐ Person ☐ Gun ☐ Vehicle ☐ Boat ☐ Article ☐ Security

TYPE OR PRINT IN BLACK INK ONLY

VCR LOG NUMBER		DESCRIPTION
FROM THE EDITED TAPE:		
222 - 227:	③	10 June cop taking nails from striker* 2:16-304 ~~58-64~~ 467-
470 - 477:	710-716 ④	striker walking in front of truck*
634 - 657½:	030-76 ⑤	striker throwing nails in the road 12 Aug.
716 - 735½:	230-280 ⑥	striker walking in front of cars 15 Aug.
752 - 757:	384-393 ⑥	nails thrown under rear wheels of truck, striker comes up from behind sign
1181 - 1199:	1041- ⑥	car and motorcycle stop for nails 24 Sep
1206 - 1225½:	70-98 40	number of vehicles and strikers - (be sure to cut the scene before the strikers start unloading wood from the truck) Nov 2
1235½ - 1318½:		two incidents with black striker carrying a large club and challenging employees Nov 2 Nov 18
1346 - 1363½:		rocks thrown over woodpile (why do pauses appear in the scene?) 14 Nov
1450 - 1486:	112-	brick thrown, verbal challenges (again, why do pauses appear in the scene?) 29 Nov
1534 - 1587:		January 5 incident Bryant at wood Gate
1592 - end:	529	Gulledge carrying a pistol; view of parking lot and building. [illegible]
FROM THE FEBRUARY TAPE:		
0 to 25:		Dempsey and shotgun in pickup truck 26 Feb
365 - 376:		February 14 incident

BIRMINGHAM WELDING SUPPLY
3923 VANDERBILT ROAD
BIRMINGHAM, AL. 35217

RUSSELL SULLIVAN OFFICE 841-1111

TO WHOM IT MAY CONCERN ON SEVERAL OCCAISONS, I WAS SHOT AT BY STRIKERS WITH A SLING SHOT + PELLET RIFFLE, ALSO I HAVE HAD A NUMBER OF FLAT TIRES, FROM NAILS THROWN BY STRIKERS

Buddy Parrish

FEATURING FREE DELIVERY SERVICE

I came to work
that day I was
the first man in to
work and came through
the gate came around
in the back of the
plant went in I had
intestenal flue went
to the bath room and
desided I was to sick to
work and went back
around the plant when
went through the nailes
I stop and opened the
door and look back and

BIRMINGHAM WELDING SUPPLY
3923 VANDERBILT ROAD
BIRMINGHAM, AL. 35217

RUSSELL SULLIVAN OFFICE 841-1111

saw the nails I stop the fist man comeing ~~[illegible]~~ in and told him about the nails and he picked them up I ruined 4 tires. I bought a set of 4 tires that day at OK tire company albirtville ala. I have also received ~~[illegible]~~ phone calls obseen in nature about my famely

Louie League

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 269
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171

RICHARD M. NORMAN
GENERAL MANAGER

12/19/83

TO WHOM IT MAY CONCERN:

The last few weeks of Oct. on a Tues. a pellet or ball bearing was shot at my truck breaking the windshield on the drivers side. The following Tues. a rock or ball bearing was shot by a sling shot by Mark Holland denting the hood. Mark Murphy and David Hudson were both with me on the last incident.

Terry Jernigan

witness- Mark J. Murphy

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

BIRMINGHAM WELDING SUPPLY
3923 VANDERBILT ROAD
BIRMINGHAM, AL. 35217

RUSSELL SULLIVAN OFFICE 841-1111

The last few weeks of Oct. on a Tues. a pellet or ball bearing was shot at my truck breaking the windshield on the drivers side the following Tues a rock or ball bearing was shot by a sling shot by MARK Hulland denting the hood.

FEATURING FREE DELIVERY SERVICE

(over).

Mark Murphy & David Hudson were both with me on the last incident

12/19/83

V. Jernigan

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

Dates Unknown

TO WHOM IT MAY CONCERN:

Thrown at with rocks.

Shot at with sling shot.

Shot at with pellet rifle. — Aug. - twice - saw it.

Slandered.

Threatened.

Blocked entrance to plant.

849-7197

Benny Norman

Benny Norman

witness - Mark J. Murphy

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

6/28/83

TO WHOM IT MAY CONCERN:

Harold Peoples ran me off the road and caused damage to the front end of my truck.

Collier E. Layne

Collier E. Layne

witness- Mark J. Murphy

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

BIRMINGHAM WELDING SUPPLY
3923 VANDERBILT ROAD
BIRMINGHAM, AL. 35217

RUSSELL SULLIVAN OFFICE 841-1111

On [illegible] June 28, 1983, Harold Peoples ran me off the road & caused damage to The front end of my truck.

Collier E Jayne

FEATURING FREE DELIVERY SERVICE

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

Date Unknown

TO WHOM IT MAY CONCERN:

Threw rock at car. Tried to burn car. Nails in drive way.

James Leopard

James Leopard

witness - Mark J. Murphy

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

James Leopard.
Threw Rock at Car. Tried to Burn Car.
Nails in Drive way.

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

Date Unknown

TO WHOM IT MAY CONCERN:

Mark Holland, owner of van, and four others followed to my house and threatened with clubs.

Strickers tacked my driveway seven times. Seven flats from plant drive and at least ten at home.

Shot rocks and ball bearings while at work.

Threatening and slander in front of my house and at plant driveway.

Jeff Files

witness - Mark J. Murphy

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

Jeff Fields

BIRMINGHAM WELDING SUPPLY
3923 VANDERBILT ROAD
BIRMINGHAM, AL. 35217

RUSSELL SULLIVAN OFFICE 841-1111

1. Mark Holland owner of van and four others.
followed to my house and Threatened with clubs.

2. strikers Tacked my Drive way 7 Times.
7 flats from Plant Drive
atlease 10 at Home

3. Shot Rocks and Ball bearings while at work.

4. Threatening and Slander In front of my House and at Plant Drive way.

FEATURING FREE DELIVERY SERVICE

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171

RICHARD M. NORMAN
GENERAL MANAGER

12/20/83

TO WHOM IT MAY CONCERN:

Strickers several times threaten my life, family's, and other workers at plant. I drive for Birmingham Mfg. Co. to pick up parts and again several times when I go to B'ham for parts strikers such as Jimmy Frost, Jimmy Atkinson, Bob Woody, Mark Holland and Jerome Byrd throw rocks and shoot ball bearings at company vehicle I drive. Also, throwing nails under vehicle causes flats.

About 4 months ago me and David Hudson were going home and on Hwy. 11, James Martin tried to run us off the road and hit vehicle with club.

Mark Murphy Mark J. Murphy

BIRMINGHAM WELDING SUPPLY
3923 VANDERBILT ROAD
BIRMINGHAM, AL. 35217

RUSSELL SULLIVAN OFFICE 841-1111

12-20-83

Strikers - several times threaten my life, familys, & othe- working at plant. I drive for B'ham. Manufacturing to pick up parts, again several times when I go to B'ham. for parts strikers - such as Jimmy Frost, Atkinson, (Bob Todd) + Mark Holland + Jerome Byrd. throw rocks & shoot Ball bearings at company vehickles I drive, also throwing nails under vehickle causes flats. about 4 mo. ago me & David Hudson were going home & on Hwy. 11, James Martin tried to run us off the road & hit vehickle with club. Mark Murphy

FEATURING FREE DELIVERY SERVICE

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171

RICHARD M. NORMAN
GENERAL MANAGER

12/19/83

TO WHOM IT MAY CONCERN:

Aus'

When I came to this company to apply for a job, the guy's on the line told me if I came back what they would do for me. Also, I have had three (3) flat tires and at different times had rocks thrown at me and my car.

Jerry Powell

witness- Mark J. Murphy

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

12-19-83

When i came to this company to apply for a job, the guy's on the line told me if i came ~~back~~ ~~to~~ back, what they would do for me. also i have had three (3) flat tires and at different times had rocks threw at me and my car.

Jerry Powell

BIRMINGHAM MANUFACTURiNG COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

Date Unknown

TO WHOM IT MAY CONCERN:

Rocks and Ball bearings shot with sling shot.

Five tires flat.

Phone calls at home.

Name calling and slandered.

Scott Case

witness - Mark D [illegible]

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

BIRMINGHAM WELDING SUPPLY
3923 VANDERBILT ROAD
BIRMINGHAM, AL. 35217

RUSSELL SULLIVAN OFFICE 841-1111

Scott CASE

Rocks & Ball Bearings shot with sling shot.

5 FLAT TIRES

PHONE CALLS AT HOME

NAME CALLING & SLANDEREN

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

Date Unknown

TO WHOM IT MAY CONCERN:

I left work traveling north on Hwy. 11. An unidentified object was thrown at my vehicle by one of the strikers. The object, thought to be a rock, struck my car about three inches below the left-rear window causing a noticable dent in the door.

Charles R. Satterwhite

Witness:

Greg Pilkington

Charles R. Satterwhite

Greg Pilkington

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

BIRMINGHAM WELDING SUPPLY
3923 VANDERBILT ROAD
BIRMINGHAM, AL. 35217

RUSSELL SULLIVAN   OFFICE 841-1111

I left work traveling north on Hwy. 11. An unidentified object was thrown at my vehicle by one of the strickers. The object, thought to be a rock, struck my car about three inches below the left-rear window causing a noticable dent in the door.

Charles R. Satterwhite

WITNESS:

Greg Pilkington

FEATURING FREE DELIVERY SERVICE

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

Date Unknown

TO WHOM IT MAY CONCERN:

Shot at by strikers with rocks from sling shot.

Jerry Williams

Jerry Williams

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

Date Unknown

TO WHOM IT MAY CONCERN:

Threw rocks at car, dent in side.

Gary Tucker

Gary P Tucker

witness - Mark J. Murphy

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

Cary Tucker Threw Rocks at Car Dent in side

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171

RICHARD M. NORMAN
GENERAL MANAGER

Date Unknown

TO WHOM IT MAY CONCERN:

Had flat tires in driveway of plant.

Roger Carson

witness - Mark J. Murphy

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

Roger Carson ~~ok~~ Flat Tires inplant
Drive way

BIRMINGHAM MANUFACTURING COMPANY INC.
P. O. DRAWER 289
SPRINGVILLE, ALABAMA 35146
CABLE BIRMCO J-9766
PHONE 205-467-6171
RICHARD M. NORMAN
GENERAL MANAGER

Date Unknown

TO WHOM IT MAY CONCERN:

Threw rocks at car.

Darrel Tucker

Darrell Tucker

LOWBEDS • TOTEMALLS • SPECIAL UNDERCARRIAGES AND CHASSIS

Darrel Tucker
Threw Rocks At Car